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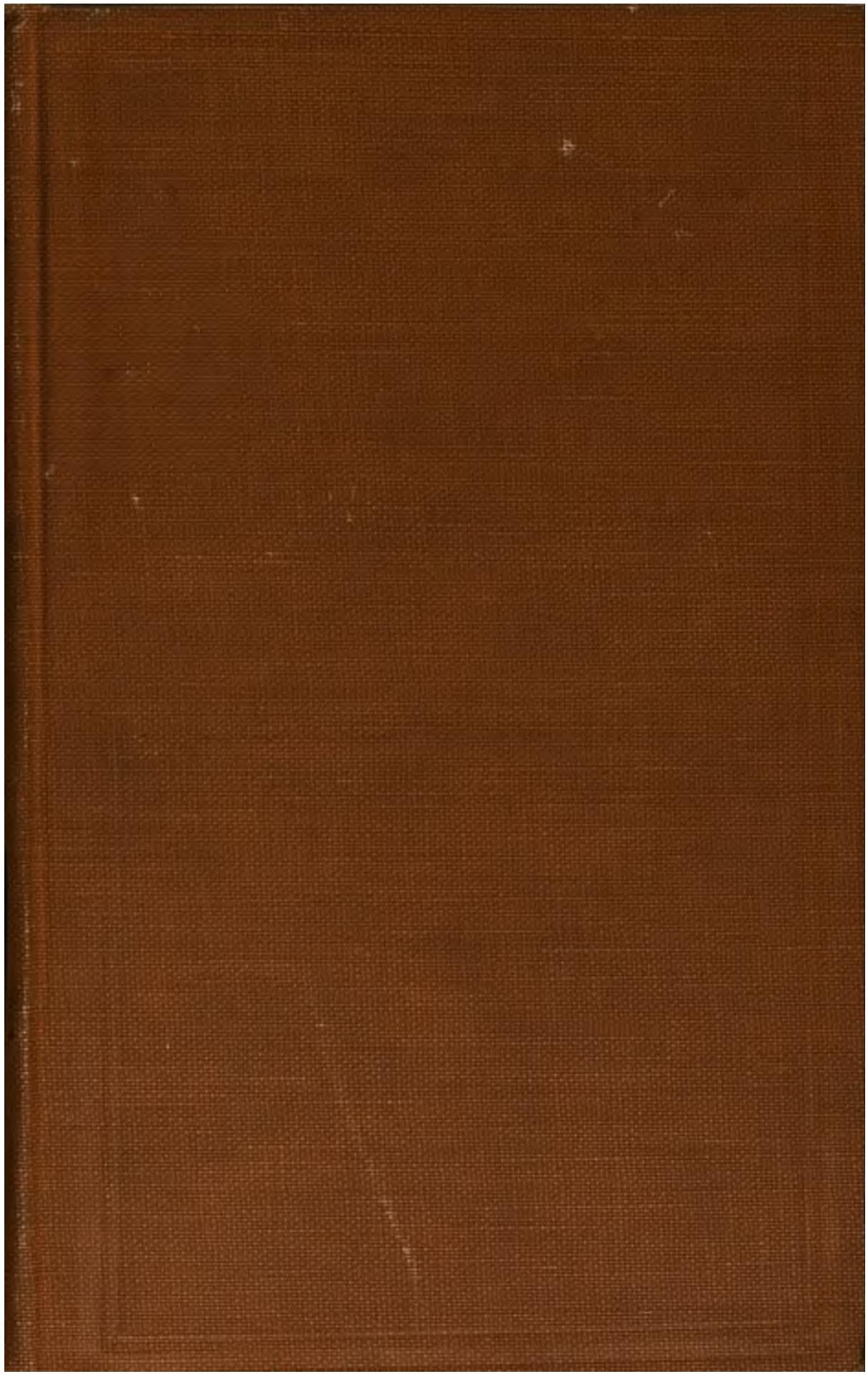
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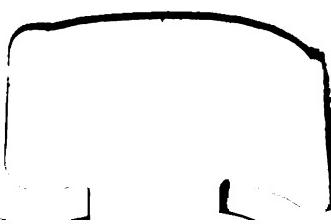
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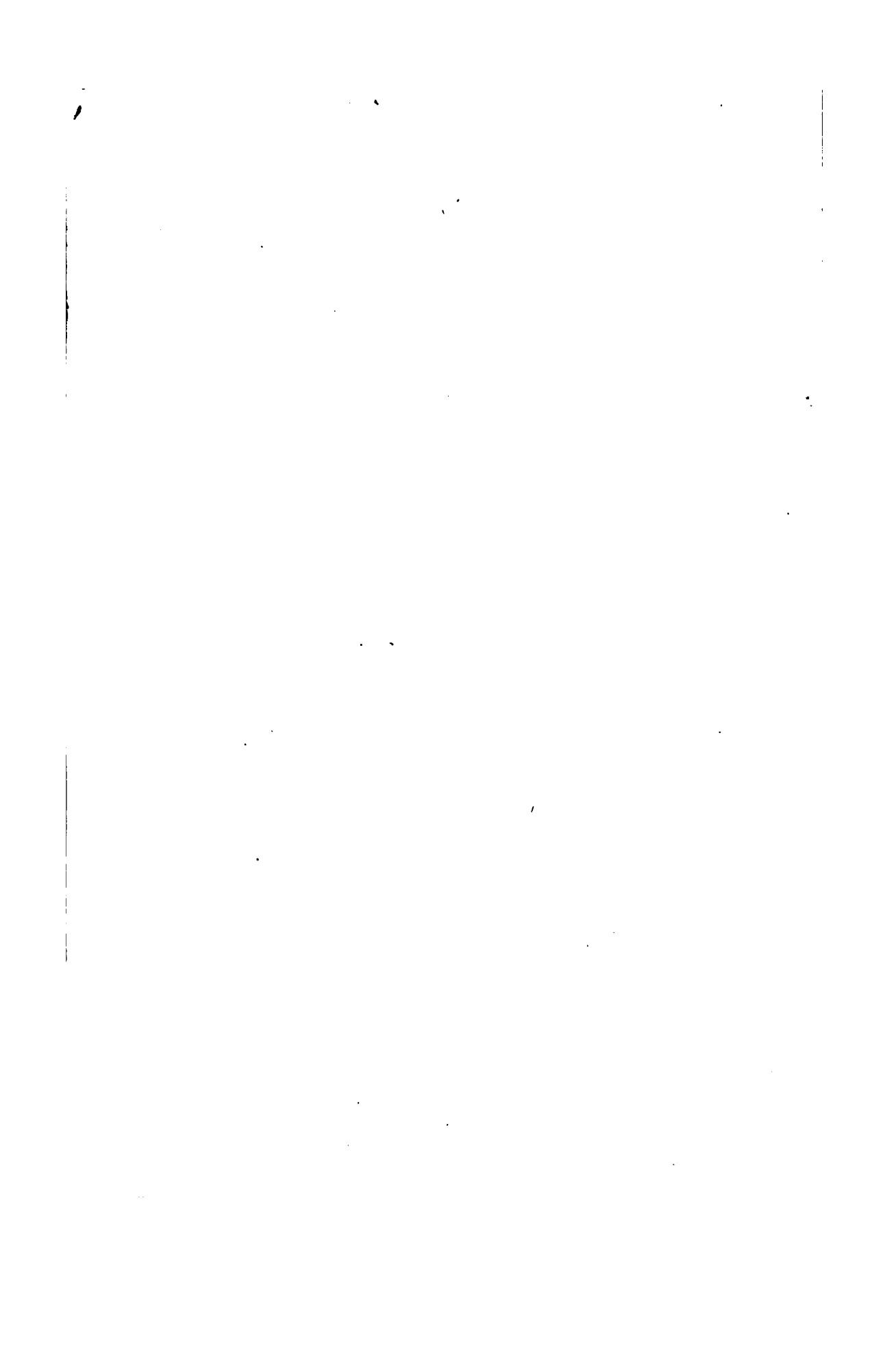
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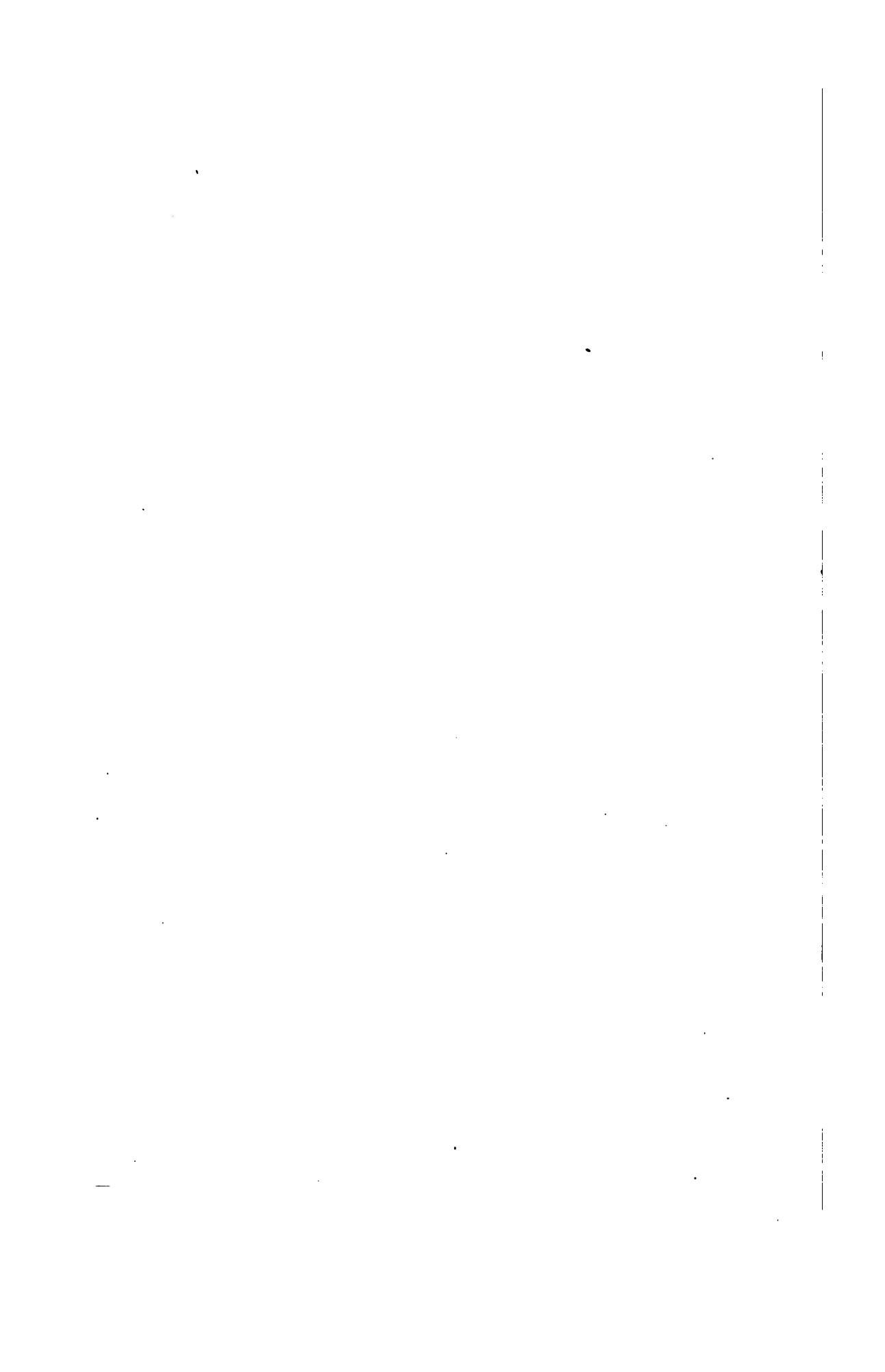


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**FEDERAL CRIMINAL LAW
AND PROCEDURE**

VOLUME THREE



FEDERAL CRIMINAL LAW AND PROCEDURE

BY

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**OF THE NEW YORK BAR, MEMBER OF THE BAR OF THE
SUPREME COURT OF THE UNITED STATES
AUTHOR OF "FEDERAL APPELLATE JURISDICTION
AND PROCEDURE"**

WITH AN INTRODUCTION BY

**HONORABLE HENRY WADE ROGERS
JUDGE OF THE UNITED STATES CIRCUIT COURT
OF APPEALS, SECOND CIRCUIT**

**IN THREE VOLUMES
VOLUME THREE**

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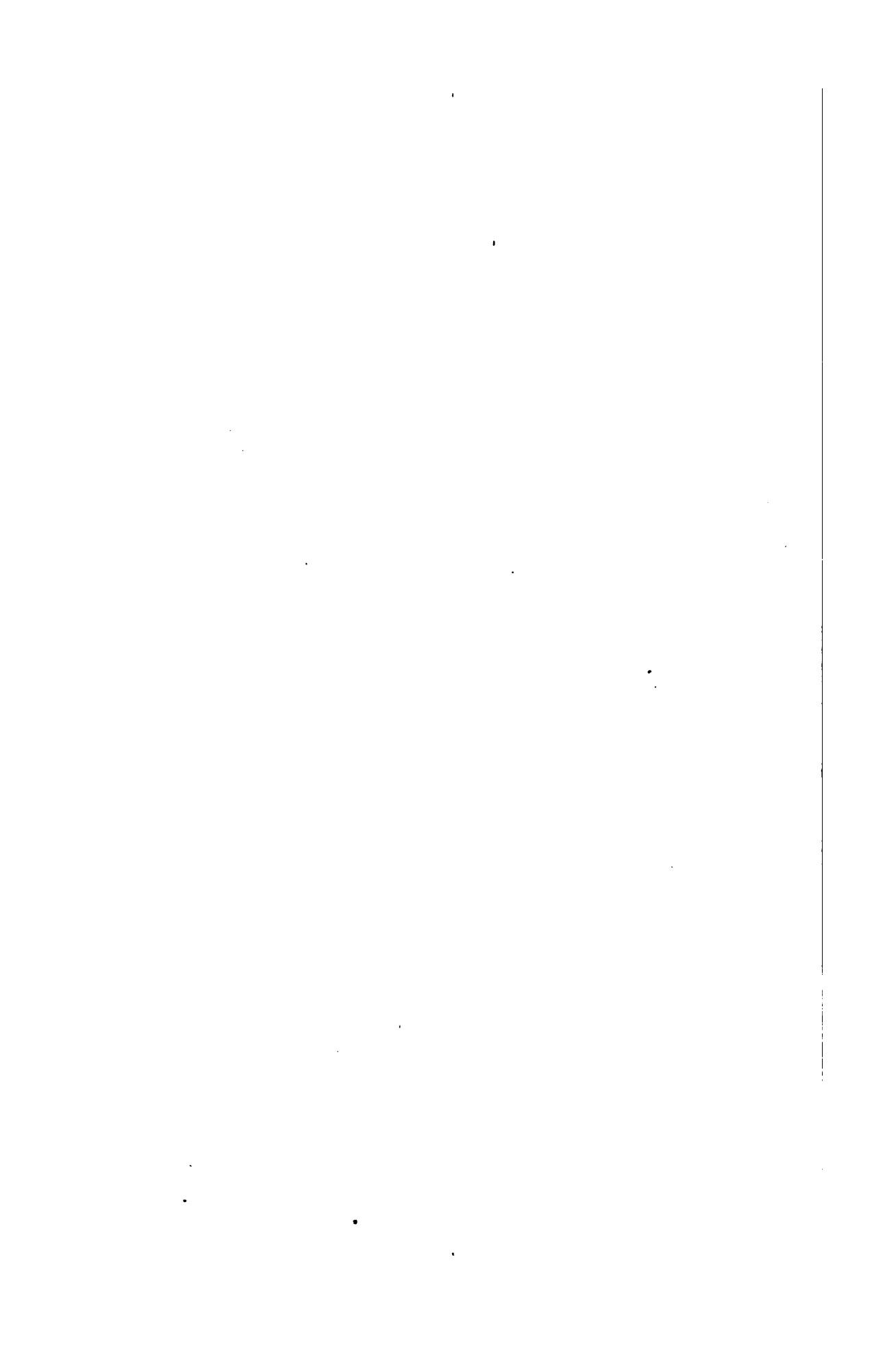
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FEDERAL CRIMINAL LAW AND PROCEDURE

VOLUME THREE

FORMS

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FORM 1]

COMBINATION AND CONSPIRACIES

FORM NO. 1

Indictment — Sherman Act. Conspiracy to Restrain Trade.

Boyle v. United States, 259 Fed. 803 (C. C. A. 7th Cir.)

No. 5648

IN THE DISTRICT COURT OF THE UNITED STATES

**Northern District of Illinois,
Eastern Division.**

INDICTMENT

For Violation Section 1. Act of July 2d 1890.

**UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division.**

**Northern District of Illinois, } set.
Eastern Division.**

Count 1 — Part I

The grand jurors for the United States of America impaneled and sworn in the District Court of the United States for the Northern District of Illinois, at the April Term, of said Court, in the year nineteen hundred and fifteen, and inquiring for that division and district, on their oath present that throughout the period of five years next preceding the finding and filing of this indictment a large number of concerns, corporations, and firms have, at places hereinafter mentioned, carried on the business of the manufacture, sale, and installation of electric panel boards, switch boards, rheostats, metal enclosing cases, and other electrical appliances and supplies (hereinafter referred to as electrical appliances); that certain of said concerns, corporations, and firms have been located in different states of the United States other than the state of Illinois, and except as they have been prevented

from so doing by the unlawful acts of defendants hereinafter described, have sold large quantities of said electrical appliances in the city of Chicago, in said division and district, and have contracted for the installation of and have installed said electrical appliances in said city of Chicago, and in order to carry out such sales and to install such electrical appliances, said concerns, corporations, and firms outside said state of Illinois have shipped such electrical appliances from states other than the state of Illinois into said city of Chicago; that in so selling and shipping such electrical appliances from states other than the state of Illinois into said city of Chicago, in said division and district said concerns, corporations, firms, and their purchasers have been engaged in trade and commerce among the several states of the United States within the meaning of the Act of Congress approved July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies"; that the names and locations of certain of said concerns, corporations, and firms so located in states other than the state of Illinois are set forth in the following table: [Here follows a list of firms.]

And the grand jurors aforesaid, upon their oath aforesaid, do further present that throughout said period of five years, J. Lang Electric Company, States Electric Company, Electric Apparatus Company, Henry Newgard and Company, Delta-Star Electric Company, and Cuthbert Electrical Manufacturing Company have each been a corporation organized and existing under and by virtue of the laws of the state of Illinois, each with its principal place of business in said city of Chicago, and each engaged in the business of the manufacture, sale, and installation of electrical appliances; that throughout said period of time George A. E. Kohler and Franklin Kohler have also been engaged in said city of Chicago in the business of manufacture, sale, and installation of electrical appliances under the name of Kohler Brothers; that throughout said period of time said last named corporations and said George A. E. Kohler and said Franklin Kohler, doing business as Kohler Brothers, have been members of, and the only members of, a voluntary unincorporated association known as Chicago Switchboard Manufacturers' Association, hereinafter called the Association;

FORM 1] COMBINATIONS AND CONSPIRACIES

That throughout said period of time Warren Ripple has been an officer and agent of J. Lang Electric Company and has been actively engaged in the management and control of its affairs, and throughout said period of time has been active in the management and control of the Association ;

That throughout said period of time Otis B. Duncan has been an officer and agent of said J. Lang Electric Company and actively engaged in the management and control of its affairs, and throughout said period of time has been active in the management and control of the Association ;

That throughout said period of time Gustave W. Berthold and Edward E. Berthold have been officers and agents of said Electric Apparatus Company and actively engaged in the management and control of its affairs, and throughout said period of time have been active in the management and control of the Association ;

That throughout said period of time Henry Newgard and Martin Newgard have been officers and agents of said Henry Newgard and Company and have been actively engaged in the management and control of its affairs, and throughout said period of time have been active in the management and control of the Association.

That during a part of said time Charles J. Peterson was an officer and agent of said Henry Newgard and Company and was actively engaged in the management and control of its affairs and during the remaining portion of said five years next preceding the finding and filing of this indictment said Charles J. Peterson has been in the employ of and an agent of said Cuthbert Electrical Manufacturing Company, and has been active in the management and control of its affairs, and throughout said period of five years has been active in the management and control of the Association ;

That during said period of time and within three years next before the finding and filing of this indictment James Obermiller was an officer and agent of the States Electric Company and was actively engaged in the management and control of its affairs, and during such time was active in the management and control of the Association ;

INDICTMENT — SHERMAN ACT

[FORM 1

That throughout the period of time from April 1, 1913, to the time of the finding and filing of this indictment Julian J. Nielsen has been an officer and agent of said States Electric Company and has been actively engaged in the management and control of its affairs, and throughout said period of time from April 1, 1913, has been active in the management and control of the Association;

That throughout said period of time Allen S. Pearl has been an officer and agent of said Delta-Star Electric Company and has been actively engaged in the management and control of its affairs, and throughout said period of time has been active in the management and control of the Association;

That throughout said period of time John Cuthbert has been President of said Cuthbert Electrical Manufacturing Company and has been actively engaged in the management and control of its affairs, and during such period of time has been active in the management and control of the Association;

That throughout said period of time George N. Jennings has been Secretary of said Cuthbert Electrical Manufacturing Company and has been actively engaged in the management and control of its affairs, and throughout said period of time has been Financial Secretary and active in the management and control of the Association;

That throughout said period of time George A. E. Kohler and Franklin Kohler have actively carried on their business as aforesaid, and throughout said period have been active in the management and control of the Association;

That throughout a portion of said time, to wit, until May 1, 1911, Arthur J. Cole was employed by George A. E. Kohler and Franklin Kohler, doing business as Kohler Brothers, and was actively engaged in the management and control of their affairs, and during said period of time was active in the management and control of the Association;

That throughout said period of time Charles Kreider has been employed by said George A. E. Kohler and Franklin Kohler, doing business as Kohler Brothers, and has been actively engaged in the management and control of their affairs, and throughout said period of time has been active in the management and control of the Association.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that throughout the period of time from January 1, 1911, to January 1, 1914, Michael Boyle was an officer and agent of Local 134 of the International Brotherhood of Electrical Workers, which said local is composed of electricians engaged in installing electrical appliances in Cook County, Illinois, aforesaid, particularly in said city of Chicago; that throughout said period of time from January 1, 1914, to January 1, 1915, Custer L. Hemp-ton was Business Agent of said Local 134; that throughout said period of time from January 1, 1913, to January 1, 1914, Raymond Cleary was an Assistant Business Agent of said Local 134; that throughout the period of time from January 1, 1911, to October 1, 1911, said John F. Nichols was Business Agent of Local 376 of the International Brotherhood of Electrical Workers, which said local at that time was composed of electricians engaged in manufacturing electrical appliances in the various electrical factories in said city of Chicago; that throughout said period of time from January 1, 1911, to October 1, 1911, Frank A. Lundmark was President of said Local 376 and throughout the period of time from January 1, 1913, to the time of the finding and filing of this indictment, said Frank A. Lundmark has been Business Agent of Local 713 of the International Brotherhood of Electrical Workers, which said local, during said period of time, has been composed of electricians engaged in manufacturing elec-trical appliances in the various electrical factories in said city of Chicago.

Count 1 — Part II

And the grand jurors aforesaid, upon their oath aforesaid, do further present that said Michael Boyle [names of defendants repeated], and George A. Jennings, Arthur J. Cole and John F. Nichols, (said George A. Jennings because he has testified before said grand jury concerning the matters set forth in this indictment in obedience to subpoena, not being herein indicted, and said Arthur J. Cole and John F. Nichols, because all acts done by them in furtherance of the conspiracy herein alleged occurred more than three years next before the finding and filing of this indictment, not being herein indicted), and divers other persons

to the said grand jurors unknown, continuously and at all times from the first day of April, 1911, in the city of Chicago, in said Eastern Division of said Northern District of Illinois, unlawfully and knowingly have engaged in a conspiracy in restraint of the trade and commerce in this indictment above mentioned, that is to say, in a conspiracy, the nature of which is now here described, to restrain said trade and commerce of said concerns, corporations and firms located in states other than the state of Illinois, in the manner and by the means now here set forth: said defendants were to hinder, restrain and prevent the installation in the city of Chicago of any electrical appliances not manufactured by the members of said association in said city of Chicago, and were to hinder, restrain and prevent the installation of any electrical appliances manufactured in states other than the state of Illinois, and thereby were to hinder, restrain and prevent the interstate trade in electrical appliances of said concerns, corporations and firms located in states other than the said state of Illinois.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that said Michael Boyle [names of defendants repeated], at the time and place aforesaid, in the manner and form aforesaid unlawfully did knowingly engage in a conspiracy in restraint of trade and commerce among the several states; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

Second Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present that under the conditions as to time, place and circumstance set forth in Part I of the first count of this indictment, the allegations of which said Part I of said first count are by reference incorporated in this count as fully as if they were here repeated, said concerns, corporations and firms located in states other than the state of Illinois, except as they have been prevented from so doing by the unlawful acts of defendants hereinafter described, have been engaged in trade and commerce among the several states of the United States within the meaning of the Act of Congress approved July 2, 1890, entitled "An Act

FORM 1] COMBINATIONS AND CONSPIRACIES

to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present that Michael Boyle [names of defendants repeated], and George A. Jennings, Arthur J. Cole and John F. Nichols, (said George A. Jennings, because he has testified before said grand jury concerning the matters set forth in this indictment in obedience to subpoena, not being herein indicted, and said Arthur J. Cole and John F. Nichols, because all acts done by them in furtherance of the conspiracy herein alleged occurred more than three years next before the finding and filing of this indictment, not being herein indicted), and divers and other persons to the said grand jurors unknown, continuously and at all times from the first day of April, 1911, in the city of Chicago in said Eastern Division of said Northern District of Illinois, unlawfully and knowingly have engaged in a conspiracy, in restraint of the trade and commerce in this indictment above mentioned, that is to say, in a conspiracy, the nature of which is now here described, to restrain said trade and commerce of said concerns, corporations and firms located in states other than the state of Illinois, in the manner and by the means now here set forth, said defendants were to hinder, restrain and prevent the installation in the city of Chicago of any electrical appliances not manufactured by the members of said Association in said city of Chicago and were to hinder, restrain and prevent the installation of any electrical appliances manufactured in states other than the state of Illinois, and thereby were to hinder, restrain and prevent the interstate trade in electrical appliances of said concerns, corporations and firms located in states other than the said state of Illinois; and the method by which defendants were to hinder, restrain and prevent the installation of electrical appliances manufactured in states other than the state of Illinois was that said defendants, officers and agents of said Local 134, were to influence and cause the electrical workers, members of said Local 134, to refuse to and not to install said electrical appliances manufactured in states other than the state of Illinois, and all of said defendants, and particularly said defendants, officers and agents of said local unions were to prevent,

by force and violence, the installation by persons other than members of Local 134 of electrical appliances manufactured in states other than the state of Illinois.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that said Michael Boyle, Frank A. Lundmark, Raymond Cleary, Custer L. Hampton, Otis B. Duncan, Warren Ripple, Julian J. Neilsen, James Obermiller, Gustave W. Berthold, Edward E. Berthold, George A. E. Kohler, Franklin Kohler, Henry Newgard, Martin Newgard, Charles J. Peterson, Charles Krieder, Allen S. Pearl, John Cuthbert, J. Lang Electrical Company, States Electric Company, Electric Apparatus Company, Henry Newgard and Company, Delta-Star Electric Company and Cuthbert Electrical Manufacturing Company, at the time and place aforesaid, in the manner and form aforesaid, unlawfully did knowingly engage in a conspiracy in restraint of trade and commerce among the several states, against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

Third Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present that under the conditions as to time, place and circumstance set forth in Part I of the first count of this indictment, the allegations of which said Part I of said first count are by reference incorporated in this count as fully as if they were here repeated, said concerns, corporations, and firms, located in states other than the state of Illinois, except as they have been prevented from so doing by the unlawful acts of defendants hereinafter described, have been engaged in trade and commerce among the several states of the United States within the meaning of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", and except for the unlawful acts of defendants hereinafter described, said concerns, corporations and firms would have shipped and caused to be transported greater quantities of said electrical appliances into said city of Chicago.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that said Michael Boyle [names of defendants

repeated], and George A. Jennings, Arthur J. Cole and John F. Nichols (said George A. Jennings, because he has testified before said grand jury concerning the matters set forth in this indictment in obedience to subpoena, not being herein indicted, and said Arthur J. Cole and John F. Nichols, because all acts done by them in furtherance of the conspiracy herein alleged occurred more than three years next before the finding and filing of this indictment, not being herein indicted), and divers other persons to the said grand jurors unknown, continuously and at all times from the first day of April, 1911, in the city of Chicago in said Eastern Division of said Northern District of Illinois, unlawfully and knowingly have engaged in a conspiracy in restraint of the trade and commerce of said concerns, corporations and firms, located in states other than the state of Illinois, whereby said trade and commerce was restrained in the manner and by the means now here set forth, that is to say, said defendants were to and did hinder, restrain and prevent the installation in the city of Chicago of electrical appliances manufactured in states other than the state of Illinois, and thereby were to and did hinder, restrain and prevent the interstate trade in electrical appliances of said concerns, corporations and firms located in states other than the said state of Illinois.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said Michael Boyle [names of defendants repeated], at the time and place aforesaid, in the manner and form aforesaid, unlawfully did knowingly engage in a conspiracy in restraint of trade and commerce among the several states; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

Fourth Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present that under the conditions as to time, place and circumstance set forth in Part I of the first count of this indictment, the allegations of which said Part I of said first count are by reference incorporated in this count as fully as if they were here repeated, said concerns, corporations and firms located in states other than the state of Illinois, except

as they have been prevented from so doing by the unlawful acts of defendants hereinafter described, have been engaged in trade and commerce among the several states of the United States within the meaning of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and except for the unlawful acts of defendants hereinafter described, said concerns, corporations and firms would have shipped and caused to be transported greater quantities of said electrical appliances into said city of Chicago.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that said Michael Boyle [names of defendants repeated], and George A. Jennings, Arthur J. Cole and John F. Nichols (said George A. Jennings, because he has testified before said grand jury concerning the matters set forth in this indictment in obedience to subpoena, not being herein indicted, and said Arthur J. Cole and John F. Nichols, because all acts done by them in furtherance of the conspiracy herein alleged occurred more than three years next before the finding and filing of this indictment, not being herein indicted), and divers other persons to the said grand jurors unknown, continuously and at all times from the first day of April, 1911, in the City of Chicago in said Eastern Division of said Northern District of Illinois, unlawfully and knowingly have engaged in a conspiracy in restraint of the trade and commerce of said concerns, corporations and firms, located in states other than the state of Illinois, whereby said trade and commerce was restrained in the manner and by the means now here set forth, that is to say, said defendants were to and did hinder, restrain and prevent the installation in the city of Chicago of electrical appliances manufactured in states other than the state of Illinois, and thereby were to and did hinder, restrain and prevent the interstate trade in electrical appliances of said concerns, corporations and firms located in states other than the said state of Illinois, and the method by which defendants were to and did hinder, restrain and prevent the installation of electrical appliances manufactured in states other than the state of Illinois was that said defendants, officers and agents of said Local 134 were to and did influence and cause the electrical workers, members of said Local 134, to refuse to and not to

install such electrical appliances manufactured in states other than the state of Illinois, and all of said defendants, and particularly said defendants, officers and agents of said local unions were to and did prevent, by force and violence, the installation by persons other than members of said Local 134 of electrical appliances manufactured in states other than the state of Illinois.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that said Michael Boyle [names of defendants repeated], at the time and place aforesaid, in the manner and form aforesaid, unlawfully did knowingly engage in a conspiracy in restraint of trade and commerce among the several states; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

Fifth Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present that under the conditions as to time, place and circumstance set forth in Part I of the first count of this indictment, the allegations of which said Part I of said first count are by reference incorporated in this count as fully as if they were here repeated, said concerns, corporations and firms located in states other than the state of Illinois, except as they have been prevented from so doing by the unlawful acts of defendants hereinafter described, have been engaged in trade and commerce among the several states of the United States within the meaning of the Act of Congress approved July 2, 1890, entitled, "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present that Michael Boyle [names of defendants repeated], and George A. Jennings, Arthur J. Cole and John F. Nichols (said George A. Jennings, because he has testified before said grand jury concerning the matters set forth in this indictment in obedience to subpoena, not being herein indicted, and said Arthur J. Cole and John F. Nichols, because all acts done by them in furtherance of the combination herein alleged occurred more than three years next before the finding and filing of this indict-

ment, not being herein indicted), and divers other persons to the said grand jurors unknown, continuously and at all times from the first day of April, 1911, in the city of Chicago in said Eastern Division of said Northern District of Illinois, unlawfully and knowingly have engaged in a combination, in restraint of trade and commerce in this indictment above mentioned, that is to say, in a combination, the nature of which is now here described, to restrain said trade and commerce of said concerns, corporations and firms located in states other than the state of Illinois, in the manner and by the means now here set forth, said defendants were to hinder, restrain and prevent the installation in the city of Chicago of any electrical appliances not manufactured by the members of said Association in said city of Chicago, and were to hinder, restrain and prevent the installation of any electrical appliances manufactured in states other than the state of Illinois, and thereby were to hinder, restrain and prevent the interstate trade in electrical appliances of said concerns, corporations and firms located in states other than the said state of Illinois.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that said Michael Boyle [names of defendants repeated], at the time and place aforesaid, in the manner and form aforesaid, unlawfully did knowingly engage in a combination in restraint of trade and commerce among the several states; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

Sixth Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present that under the conditions as to time, place and circumstance set forth in Part I of the first count of this indictment, the allegations of which said Part I of said first count are by reference incorporated in this count as fully as if they were here repeated, said concerns, corporations and firms located in states other than the state of Illinois, except as they have been prevented from so doing by the unlawful acts of defendants hereinafter described, have been engaged in trade and commerce among the several states of the United States within the meaning of the Act of Congress approved July 2, 1890,

entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present that Michael Boyle [names of defendants repeated], and George A. Jennings, Arthur J. Cole and John F. Nichols (said George A. Jennings, because he has testified before said grand jury concerning the matters set forth in this indictment in obedience to subpoena, not being herein indicted, and said Arthur J. Cole and John F. Nichols, because all acts done by them in furtherance of the combination herein alleged occurred more than three years next before the finding and filing of this indictment, not being herein indicted) and divers other persons to the said grand jurors unknown, continuously and at all times from the first day of April, 1911, in the city of Chicago, in said Eastern Division of said Northern District of Illinois, unlawfully and knowingly have engaged in a combination in restraint of the trade and commerce in this indictment above mentioned, that is to say, in a combination, the nature of which is now here described, to restrain said trade and commerce of said concerns, corporations and firms located in states other than the state of Illinois, in the manner and by the means now here set forth, said defendants were to hinder, restrain and prevent the installation in the City of Chicago of any electrical appliances not manufactured by the members of the said Association in said city of Chicago and were to hinder, restrain and prevent the installation of any electrical appliances manufactured in states other than the state of Illinois, and hereby were to hinder, restrain and prevent the interstate trade in electrical appliances of said concerns, corporations and firms located in states other than the said state of Illinois; and the method by which defendants were to hinder, restrain and prevent the installation of electrical appliances manufactured in states other than the state of Illinois was that said defendants, officers and agents of said Local 134, were to influence and cause the electrical workers, members of said Local 134, to refuse to and not to install said electrical appliances manufactured in states other than the state of Illinois, and all of said defendants, and particularly said defendants, officers and agents of said local unions were to prevent, by force and violence, the installation by

persons other than members of Local 134 of electrical appliances manufactured in states other than the state of Illinois.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that said Michael Boyle [names of defendants repeated], at the time and place aforesaid, in the manner and form aforesaid, unlawfully did knowingly engage in a conspiracy in restraint of trade and commerce among the several states; against the peace and dignity of the said United States and contrary to the form of the statute of the same in such case made and provided.

Seventh Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present that under the conditions as to time, place and circumstance set forth in Part I of the first count of this indictment, the allegations of which said Part I of said first count are by reference incorporated in this count as fully as if they were here repeated, said concerns, corporations and firms located in states other than the state of Illinois, except as they have been prevented from so doing by the unlawful acts of defendants hereinafter described, have been engaged in trade and commerce among the several states of the United States within the meaning of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", and except for the unlawful acts of defendants hereinafter described, said concerns, corporations and firms would have shipped and caused to be transported greater quantities of said electrical appliances into said city of Chicago.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that said Michael Boyle [names of defendants repeated], and George A. Jennings, Arthur J. Cole and John F. Nichols (said George A. Jennings, because he has testified before said grand jury concerning the matters set forth in this indictment in obedience to subpoena, not being herein indicted, and said Arthur J. Cole and John F. Nichols, because all acts done by them in furtherance of the combination herein alleged occurred more than three years next before the finding and filing of this indictment, not being herein indicted), and divers other persons to the said grand jurors unknown, continuously and at all times

from the first day of April, 1911, in the city of Chicago in said Eastern Division of said Northern District of Illinois, unlawfully and knowingly have engaged in a combination in restraint of the trade and commerce of said concerns, corporations and firms, located in states other than the state of Illinois, whereby said trade and commerce was restrained in the manner and by the means now here set forth, that is to say, said defendants were to and did hinder, restrain and prevent the installation in the city of Chicago of electrical appliances manufactured in states other than the state of Illinois, and thereby were to and did hinder, restrain and prevent the interstate trade in electrical appliances of said concerns, corporations and firms located in states other than the said state of Illinois.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that said Michael Boyle [names of defendants repeated], at the time and place aforesaid, in the manner and form aforesaid, unlawfully did knowingly engage in a combination in restraint of trade and commerce among the several states; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

Eighth Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present that under the conditions as to time, place and circumstances set forth in Part I of the first count of this indictment, the allegations of which said Part I of said first count are by reference incorporated in this count as fully as if they were here repeated, said concerns, corporations and firms located in states other than the state of Illinois, except as they have been prevented from so doing by the unlawful acts of defendants hereinafter described, have been engaged in trade and commerce among the several states of the United States within the meaning of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present that said Michael Boyle [names of defendants repeated], on the seventh day of May, 1913, in the city of Chicago

in said Eastern Division of said Northern District of Illinois, unlawfully did knowingly enter into and make a certain contract in restraint of trade and commerce so being carried on by said concerns, corporations and firms located in states other than the state of Illinois, in this indictment above mentioned, that is to say, all of said defendants then and there made a contract between themselves whereby said defendants and said local unions and the members thereof, acting through their said officers and agents, severally agreed to hinder, restrain and prevent the installation in the city of Chicago of any electrical appliances not manufactured by the members of said Association in said city of Chicago, and agreed to hinder, restrain and prevent the installation of any electrical appliances manufactured in states other than the state of Illinois, and consequently agreed to hinder, restrain and prevent the interstate trade in electrical appliances of said concerns, corporations and firms located in states other than the said state of Illinois, said contract of the seventh day of May, 1913, being a continuation and renewal of a certain other contract of similar terms dated April 1, 1912, which in turn was a continuation and renewal of a similar contract of April 1, 1911, said contract of April 1, 1911, was in part evidenced by the following writing:

(Here follows articles of agreement.)

And so the grand jurors aforesaid, upon their oath aforesaid, do say that said Michael Boyle [names of defendants repeated], at the time and place aforesaid, in the manner and form aforesaid, unlawfully did knowingly enter into and make a contract in restraint of trade and commerce among the several states; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

Ninth Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present that under the conditions as to time, place and circumstance set forth in Part I of the first count of this indictment, the allegations of which said Part I of said first count are by reference incorporated in this count as fully as if they were here repeated, said concerns, corporations and firms located in states other than the state of Illinois, except

FORM 1] COMBINATIONS AND CONSPIRACIES

as they have been prevented from so doing by the unlawful acts of defendants hereinafter described, have been engaged in trade and commerce among the several states of the United States within the meaning of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

And the grand jurors aforesaid, upon their oath aforesaid, do further present that said Michael Boyle [names of defendants repeated], on the seventh day of May, 1913, in the city of Chicago in said Eastern Division of said Northern District of Illinois, unlawfully did knowingly enter into and make a certain contract in restraint of trade and commerce so being carried on by said concerns, corporations and firms located in states other than the state of Illinois, in this indictment above mentioned, that is to say, all of said defendants then and there made a contract between themselves whereby said defendants and said local unions and the members thereof, acting through their said officers and agents, severally agreed to and did hinder, restrain and prevent the installation in the city of Chicago of any electrical appliances not manufactured by the members of said Association in said city of Chicago, and agreed to and did hinder, restrain and prevent the installation of any electrical appliances manufactured in states other than the state of Illinois, and consequently agreed to and did hinder, restrain and prevent the interstate trade in electrical appliances of said concerns, corporations and firms located in states other than the said state of Illinois; and the method by which defendants and said local unions, and the members thereof, agreed to and did hinder, restrain and prevent the installation of electrical appliances manufactured in states other than the state of Illinois was that said defendants, officers and agents of said Local 134, and said members of said Local 134, were to and did refuse to install, and were to and did refrain from installing such electrical appliances manufactured in states other than the state of Illinois, and all of said defendants, and particularly said defendants, officers and agents of said local unions, and certain members of said local unions whose names are to the said grand jurors unknown, were to and did prevent by force and violence the in-

DEMURRER TO INDICTMENT UNDER SHERMAN ACT [FORM 2]

stallation by persons other than members of such Local 134 of electrical appliances manufactured in states other than the state of Illinois; said contract of April 1, 1911, being in part evidenced by a document which is set forth in the eighth count of this indictment, entitled "Articles of Agreement", dated April 1, 1911, and which is referred to and incorporated in this count as fully as if herein repeated; said contract of April 1, 1912, being in part evidenced by a document which is set forth in the eighth count of this indictment entitled "Articles of Agreement", dated April 1, 1912, and which is referred to and incorporated in this count as fully as if herein repeated; and said contract of May 7, 1913, being in part evidenced by a document which is set forth in the eighth count of this indictment, entitled "Articles of Agreement", dated May 7, 1913, and which is referred to and incorporated in this count as fully as if herein repeated.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that said Michael Boyle [names repeated], at the time and place aforesaid, in the manner and form aforesaid, unlawfully did knowingly enter into and make a contract in restraint of trade and commerce among the several states; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

**CHARLES F. CLYNE,
United States Attorney.**

FORM NO. 2

Demurrer to Indictment under Sherman Act.

Boyle v. United States, 259 Fed. 803 (C. C. A. 7th Cir.).

United States of America, }
Northern District of Illinois, } ss.
Eastern Division. }

IN THE UNITED STATES DISTRICT COURT.

The United States }
 vs. }
Michael Boyle, et al. } **Indictment No. 5648.**

DEMURRER

And now comes the defendant James Obermiller, by Joseph Z. Klenha, and John F. Tyrrell, his attorneys, comes and demurs to the indictment heretofore filed against him in the above entitled cause, and to each and every count thereof, and says that the same is not sufficient in law for him, the said defendant, James Obermiller, to be required to plead unto, and that each and every count thereof is defective, uncertain, insufficient, vague and indefinite in the following particulars:

For that the said charge of conspiracy fails to show or allege that this defendant was a party thereto within three years next prior to and preceding the return of the indictment herein.

For that the said indictment fails to allege any fact or facts showing the formation or creation of a conspiracy.

For that the said indictment fails to allege any fact or facts showing that trade was restrained, commerce interfered with or any act done to hinder trade or commerce.

For that the alleged conspiracy does not show facts sufficient to bring the same within the provisions of any statute of the United States of America.

For that the alleged conspiracy relates solely to matters exclusively within the jurisdiction of the laws of the State of Illinois, and not within the inhibition of any Statutes of the laws of the United States of America.

For that there is no sufficient showing of unlawful means or the commission of any overt act by this defendant.

For that there is no sufficient allegation or showing of commencement or object of the alleged conspiracy.

For that there is no showing of any agreement, contract, combination, or conspiracy to which the defendant is by any sufficient allegation charged as a party or principal.

For that there is no sufficient showing of the relation of the defendant to the "association" or "union" mentioned to connect or charge him with the alleged conspiracy.

For that the said acts charged in the said indictment have no relation to or connection with Inter-State Commerce, or made unlawful by the Statute of the United States of America.

For that the attempted statements or alleged recitals of fact

DEMURRER TO INDICTMENT UNDER SHERMAN ACT [FORM 2]

seeking or attempting to show the connection or relation of this defendant with an alleged conspiracy, are statements or recitals of conclusions of law.

For that the alleged wrongful acts, combination or conspiracy, were not done, formed or threatened or intended as to any matter of commerce or trade, but if existed or were done, they related to matters which were part of the jurisdiction of, and within the police powers of the State of Illinois.

For that the said alleged unlawful combination, contract, or conspiracy as shown by the said indictment related not to articles of trade and commerce as such, but to such as was made by non-union labor wheresoever made, and while they were such articles within the State of Illinois, they were not subject to the power of the United States of America under the authority to regulate and control commerce; and was in pursuance of the Articles of Agreement made for that purpose and as set forth in part of said indictment.

For that said alleged conspiracy is not shown to have been continuous conspiracy, or to have existed within three (3) years next preceding and prior to the day and date of the return of said indictment herein; any statement or attempted recital attempting to show that it was a continuous conspiracy is a statement of a conclusion and is refuted and nullified by the other allegations in said indictment contained.

For that said indictment does not show any contract or agreement connecting the defendant James Obermiller with the same in violation of law.

For that the said indictment does not fully show the alleged contracts or agreements and the parts thereof do not show any unlawful combination, contract or confederation in force and effect within three years last past next preceding the day and date of the return of said indictment.

For that said indictment does not show that this defendant James Obermiller is a party or principal to any unlawful contract, combination, confederation or conspiracy.

For that the said indictment does not sufficiently state or allege any specific or general act showing that the defendant did engage in, become a party to, or principal in any unlawful

contract, agreement, conspiracy, combination or confederation.

For that the said indictment does not allege any fact or facts showing that the defendant James Obermiller engaged in, was a party to or principal in, any combination, confederation or conspiracy in restraint of trade or to hinder the same; nor the time, place or manner thereof.

For all of which causes of demurrer existing as to each and every count of said indictment, this defendant, James Obermiller, says that each and every count thereof is and are demurrable and not sufficient in law to make plea unto.

Wherefore, he prays that said indictment and each and every count thereof as to him, the said James Obermiller, defendant herein, be quashed, and that he go hence without date.

JOSEPH Z. KLENHA,

JOHN F. TYRRELL,

Attorneys for Defendant, James Obermiller, Impleaded.

FORM NO. 3

Demurrer — Sherman Act.

Boyle *v.* United States, 259 Fed. 803 (C. C. A. 7th Cir.).

United States of America,
Northern District of Illinois, } ss.
Eastern Division.

IN THE UNITED STATES DISTRICT COURT

For and in Said District and Division.

The United States of America }
vs. } No. 5648.
Michael Boyle, *et al.* }

And the defendant, Michael Boyle, by Edward R. Litzinger, his attorney, comes and demurs to the said indictment and to each and every count thereof, and says, that the same is not sufficient in law for him, Michael Boyle, to plead unto, and that each count is so defective, uncertain and unsufficient in the particulars following:

- 1: For that said charge of conspiracy fails to show that this defendant was a party thereto within three years next prior to the return of the indictment herein.
- 2: For that alleged conspiracy does not show facts sufficient to bring it within any statute of the United States of America.
- 3: For that the alleged conspiracy relates to matters entirely within the jurisdiction of the laws of the State of Illinois, and not within the inhibition of any laws of the United States of America.
- 4: For that there is no sufficient allegation of the object of the alleged conspiracy.
- 5: For that there is no sufficient showing of unlawful means, or the commission of any overt act by this defendant.
- 6: For that there is no sufficient showing whereby the membership or relation of this defendant to the Union mentioned to connect him with the alleged conspiracy.
- 7: For that the attempted statements of fact seeking to show a connection of this defendant with an alleged conspiracy are statements of conclusions of law.
- 8: For that there is no showing of any contract, conspiracy or combination to which this defendant is by any sufficient allegation charged to be a party.
- 9: For that the said acts charged in the said indictment have no connection with Interstate Commerce made unlawful by any statute of the United States of America.
- 10: For that the said indictment and each and every count thereof is vague, indefinite and uncertain, in failing to show:
 - (First) When the alleged conspiracy was entered into;
 - (Second) What the alleged conspiracy consisted of;
 - (Third) Whether the alleged conspiracy was carried out;
 - (Fourth) When such alleged conspiracy was carried out;
 - (Fifth) What acts were carried out pursuant to said conspiracy, and when such acts were commenced and consummated;
 - (Sixth) Whether such conspiracy is still in existence or has terminated.
- 11: For that the said indictment and each and every count thereof is vague, indefinite and uncertain, in failing to show in what respect the contracts set forth in Count Seven of said

indictment is in restraint of trade or commerce among the several states, and what facts constituted such restraint and what acts or conduct on the part of said defendant, participated in said contract or in the alleged restraint of trade or commerce, and between which of the several states trade and commerce was restrained, and whose particular commerce was restrained, between the states, and the facts constituting such restraint.

12: For that the said indictment and each and every count thereof is vague, indefinite and uncertain, in failing to state sufficient facts as to the act and conduct of said defendant in the furtherance of the contract or conspiracy in restraint of the trade or commerce in the several states.

13: For that the said indictment and each and every count thereof is vague, indefinite and uncertain, in failing to disclose facts connecting this defendant with any other part in the prosecution or furtherance of the alleged conspiracy set forth in each count of the indictment.

14: For that the said indictment and each and every count thereof is vague, indefinite and uncertain, in failing to allege and disclose facts stating the authority of this defendant to enter into the contract set forth in the indictment, or what specific acts were performed pursuant to such alleged contract.

15: For that the said indictment and each and every count thereof is vague, indefinite and uncertain, in that the several counts of said indictment fail to show such facts whereby it could be ascertained that the contract set forth in said indictment was in restraint of trade or commerce among the several states, and if so, in what respect.

16: For that the said indictment and each and every count thereof is vague, indefinite and uncertain, in that the several counts of said indictment fail to show such facts giving the nature of and conspiracy in restraint of trade or commerce among the several states, and in what manner such conspiracy restrained such trade and commerce, and between what states such trade or commerce was restrained.

17: All of the several counts of said indictment are so vague, indefinite and uncertain, as to fail to apprise this defendant of the nature of the charges against him, or in what manner he has

violated the law pertaining to a contract or conspiracy in restraint of trade or commerce among the several states, or to exhibit to him such facts from which he may ascertain the nature of the charges against him.

For all of which causes of demurrer existing, as to each of the counts of said indictment, this defendant says that each and every count thereof is and are demurrable, and not sufficient in law to make plea unto.

Wherefore he prays that said indictment, and each and every count thereof, be quashed, and that he go hence without date.

EDW. R. LITZINGER,
Attorney for Michael Boyle.

FORM NO. 4

Demurrer — Sherman Act.

Boyle *v.* United States, 259 Fed. 803 (C. C. A. 7th Cir.).

United States of America, }
Northern District of Illinois, } ss.
Eastern Division.

IN THE UNITED STATES DISTRICT COURT

For and in Said District and Division.

United States of America }
vs. } No. 5648.
Michael Boyle, *et al.*

And the defendant, Raymond Cleary, by Edward R. Litzinger, his attorney, comes and demurs to the said indictment and to each and every count thereof, and says, that the same is not sufficient in law for him, Raymond Cleary, to plead unto, and that each count is so defective, uncertain and insufficient in the particulars following:

1: For that said charge of conspiracy fails to show that this defendant was a party thereto within three years next prior to the return of the indictment herein.

2: For that the alleged conspiracy does not show facts sufficient to bring it within any statute of the United States of America.

FORM 4] COMBINATIONS AND CONSPIRACIES

3: For that the alleged conspiracy relates to matters entirely within the jurisdiction of the laws of the State of Illinois, and not within the inhibition of any laws of the United States of America.

4: For that there is no sufficient allegation of the object of the alleged conspiracy.

5: For that there is no sufficient showing of unlawful means, or the commission of any overt act by this defendant.

6: For that there is no sufficient showing whereby the membership or relation of this defendant to the Union mentioned to connect him with the alleged conspiracy.

7: For that the attempted statements of fact seeking to show a connection of this defendant with an alleged conspiracy are statements of conclusions of law.

8: For that there is no showing of any contract, conspiracy or combination to which this defendant is by any sufficient allegation charged to be a party.

9: For that the said acts charged in the said indictment have no connection with Interstate Commerce made unlawful by any statute of the United States of America.

10: For that the said indictment and each and every count thereof is vague, indefinite and uncertain, in failing to show:

(First) When the alleged conspiracy was entered into;

(Second) What the alleged conspiracy consisted of;

(Third) Whether the alleged conspiracy was carried out;

(Fourth) When such alleged conspiracy was carried out;

(Fifth) What acts were carried out pursuant to said conspiracy, and when such acts were commenced and consummated;

(Sixth) Whether such conspiracy is still in existence or has terminated.

11: For that the said indictment and each and every count thereof is vague, indefinite and uncertain, in failing to show in what respect the contracts set forth in Count Seven of said indictment is in restraint of trade or commerce among the several states, and what facts constituted such restraint and what acts or conduct on the part of said defendant, participated in said contract or in the alleged restraint of trade or commerce, and

between which of the several states trade and commerce was restrained, and whose particular commerce was restrained between the several states, and the facts constituting such restraint.

12: For that the said indictment and each and every count thereof is vague, indefinite and uncertain, in failing to state sufficient facts as to the act and conduct of said defendant in the furtherance of the contract or conspiracy in restraint of the trade or commerce in the several states.

13: For that the said indictment and each and every count thereof is vague, indefinite and uncertain, in failing to disclose facts connecting this defendant with any other party in the prosecution or furtherance of the alleged conspiracy set forth in each count of the indictment.

14: For that the said indictment and each and every count thereof is vague, indefinite and uncertain, in failing to allege and disclose facts stating the authority of this defendant to enter into the contract set forth in the indictment, or what specific acts were performed to such alleged contract.

15: For that the said indictment and each and every count thereof is vague, indefinite and uncertain, in that the several counts of said indictment fail to show such facts whereby it could be ascertained that the contract set forth in said indictment was in restraint of trade or commerce among the several states, and if so, in what respect.

16: For that the said indictment and each and every count thereof is vague, indefinite and uncertain, in that the several counts of said indictment fail to show such facts giving the nature of and conspiracy in restraint of trade or commerce among the several states, and in what manner such conspiracy restrained such trade and commerce, and between what states such trade or commerce was restrained.

17: All of the several counts of said indictment are so vague, indefinite and uncertain, as to fail to apprise this defendant of the nature of the charges against him, or in what manner he has violated the law pertaining to a contract or conspiracy in restraint of trade or commerce among the several states, or to exhibit to him such facts from which he may ascertain the nature of the charges against him.

For all of which causes of demurrer existing, as to each of the counts of said indictment, this defendant says, that each and every count thereof is and are demurrable, and not sufficient in law to make plea unto.

Wherefore he prays that said indictment, and each and every count thereof, be quashed, and that he go hence without date.

EDW. R. LITZINGER,
Attorney for Raymond Cleary.

FORM NO. 5

Order Withdrawing Pleas of Not Guilty and Leave to File Demurrs.

Boyle *v.* United States, 259 Fed. 803 (C. C. A. 7th Cir.).

The United States
vs.
Michael Boyle, *et al.*

No. 5648.

Come the parties by their attorneys and by leave of court first had and obtained, the following defendants, to wit, Lang Electric Company, States Electric Co., Electrical Apparatus Co., Henry Newgard & Co., Cuthbert Electrical Mfg. Co., Otis B. Duncan, Warren Ripple, J. J. Neilson, Gustavus M. Berthod, Edward E. Berthold, Henry Newgard, Martin Newgard, Chas. J. Peterson and John Cuthbert, withdraw their pleas of not guilty heretofore entered herein and file their demurrer to the indictment which said demurrs are set for hearing on March 28, 1916.

FORM NO. 6

Order Overruling Demurrs.

Boyle *v.* United States, 259 Fed. 803 (C. C. A. 7th Cir.).

The United States
vs.
Michael Boyle, *et al.*

No. 5648.

Come the parties by their attorneys and the Court having considered and being now fully advised in the matter of the de-

MOTION TO DIRECT VERDICT AT CLOSE OF EVIDENCE [FORM 7]

murrers of the defendants to the indictment herein it is ordered that all of the said demurrers be and they are hereby overruled and the defendants are ruled to plead by April 7, 1916.

FORM NO. 7

Motion to Direct a Verdict at the Close of All the Evidence.

Boyle v. United States, 259 Fed. 803 (C. C. A. 7th Cir.).

IN THE DISTRICT COURT OF THE UNITED STATES

**Northern District of Illinois,
Eastern Division.**

United States of America |
vs. |
Michael Boyle, et al. |
No. 5648.

MOTION

Now come Warren Ripple, Otis B. Duncan, Julian J. Neilsen, James Obermiller, Gustave W. Berthold, Edward E. Berthold, George A. E. Kohler, Franklin Kohler, Charles J. Peterson, Charles Kreider, John Cuthbert, J. Lang Electrical Company, States Electric Company, Electric Apparatus Company, Henry Newgard & Company, and Cuthbert Electrical Manufacturing Company, defendants in the above entitled cause, by their counsel, Robert W. Childs, at the close of all the evidence in the case, and move the court to direct the jury to find them, the said Warren Ripple, Otis B. Duncan, Julian J. Neilsen, James Obermiller, Gustave W. Berthold, Edward E. Berthold, George A. E. Kohler, Franklin Kohler, Charles J. Peterson, Charles Kreider, John Cuthbert, J. Lang Electrical Company, States Electrical Company, Electric Apparatus Company, Henry Newgard & Company, and Cuthbert Electric Manufacturing Company, not guilty upon the following grounds:

1. No offense against the United States is charged in the indictment.
2. The evidence adduced fails to prove the conspiracy or combination charged in the indictment.

3. The evidence fails to prove that the said Warren Ripple, Otis B. Duncan, Julian J. Neilsen, James Obermiller, Gustave W. Berthold, Edward E. Berthold, George A. E. Kohler, Franklin Kohler, Charles J. Peterson, Charles Kreider, John Cuthbert, J. Lang Electrical Company, States Electric Company, Electric Apparatus Company, Henry Newgard & Company, and Cuthbert Electrical Manufacturing Company were at any time connected with the conspiracy or combination, if any, connected with the indictment.

4. The evidence adduced does not tend to prove that the said Warren Ripple, Otis B. Duncan, Julian J. Neilsen, James Obermiller, Gustave W. Berthold, Edward E. Berthold, George A. E. Kohler, Franklin Kohler, Charles J. Peterson, Charles Kreider, John Cuthbert, J. Lang Electrical Company, States Electric Company, Electric Apparatus Company, Henry Newgard & Company, and Cuthbert Electrical Manufacturing Company were guilty in manner and form as charged in the indictment.

5. The evidence adduced fails to prove the said defendants, Warren Ripple, Otis B. Duncan, Julian J. Neilsen, James Obermiller, Gustave W. Berthold, Edward E. Berthold, George A. E. Kohler, Franklin Kohler, Charles J. Peterson, Charles Kreider, John Cuthbert, J. Lang Electrical Company, States Electric Company, and Cuthbert Electrical Manufacturing Company, were at any time connected with the conspiracy, combination or agreement charged in the indictment within three years prior to the 27th day of April, 1915.

6. There is a variance between the charge and every count in the indictment, and the evidence adduced, in the following respects:—

(1) The evidence adduced does not tend to prove that the defendants were to hinder, restrain, and prevent the installation in the City of Chicago of any electrical apparatus, but manufactured by the members of the Chicago Switchboard Association, whereas the evidence adduced tends to prove that the defendants were to and were assisting in, aiding, and furthering the installation of electrical appliances manufactured by others than the members of said Association, and were actually installing such appliances in the said City of Chicago throughout the period of time mentioned in the indictment.

MOTION TO DIRECT VERDICT

[FORM 8

(2) The evidence adduced does not tend to prove that Warren Ripple, Otis B. Duncan, Julian J. Neilsen, James Obermiller, Gustave W. Berthold, Edward E. Berthold, George A. E. Kohler, Franklin Kohler, Charles J. Peterson, Charles Kreider, John Cuthbert, J. Lang Electrical Company, States Electric Company, Electric Apparatus Company, Henry Newgard & Company and Cuthbert Electrical Manufacturing Company, were to hinder, prevent and restrain the installation of electrical appliances manufactured in states other than the State of Illinois, whereas the evidence adduced shows that the said defendants were to and did throughout said period of time install, and aid, assist in and further the installation in Chicago of electrical appliances manufactured in states other than the State of Illinois.

(3) It is charged that the defendants were to influence and cause the electrical workers, members of Local 134, to refuse to and not to install electrical appliances manufactured in states other than Illinois; whereas the evidence tends to prove that the defendants were not to and did not influence and cause the electrical workers, members of Local 134, to refuse to and not to install electrical appliances manufactured in states other than Illinois.

(4) It is charged that the defendants were to prevent by force and violence the installation by persons other than members of Local 134 of electrical appliances manufactured in states other than the State of Illinois, whereas the evidence adduced tends to show that defendants did not prevent the installation of such appliances by force and violence.

ROBERT W. CHILDS,
Counsel for Above-named Defendants.

FORM NO. 8

Motion to Direct Verdict.

Boyle v. United States, 259 Fed. 803 (C. C. A. 7th Cir.).

(Title of Cause.)

Now come Michael Boyle, Frank A. Lundmark and Raymond Cleary, defendants in the above entitled cause, by their

counsel, Edward R. Litzinger, at the close of all the evidence in the case, and move the court to direct the jury to find them, the said Michael Boyle, Frank A. Lundmark and Raymond Cleary, not guilty upon the following grounds:

1. No offense against the United States is charged in the indictment.

2. The evidence adduced fails to prove the conspiracy or combination charged in the indictment.

3. The evidence fails to prove that the said Michael Boyle, Frank A. Lundmark and Raymond Cleary were at any time connected with the conspiracy or combination, if any, charged in the indictment.

4. The evidence adduced does not tend to prove that the said Michael Boyle, Frank A. Lundmark and Raymond Cleary were guilty in manner and form as charged in the indictment.

5. The evidence adduced fails to prove the said defendants, Michael Boyle, Frank A. Lundmark and Raymond Cleary, were at any time connected with the conspiracy, combination or agreement charged in the indictment within three years prior to the 27th day of April, 1915.

6. There is a variance between the charge and every count in the indictment, and the evidence adduced, in the following respects:

(1) The evidence adduced does not tend to prove that the defendants were to hinder, restrain and prevent the installation in the City of Chicago of any electrical apparatus, not manufactured by the members of the Chicago Switchboard Association, whereas the evidence adduced tends to prove that the defendants were to and were assisting in, aiding, and furthering the installation of electrical appliances manufactured by others than the members of the said Association, and were actually installing such appliances in the said City of Chicago throughout the period of time mentioned in the indictment.

(2) The evidence adduced does not tend to prove that Michael Boyle, Frank A. Lundmark and Raymond Cleary, were to hinder, prevent and restrain the installation of electrical appliances manufactured in states other than the State of Illinois, whereas the evidence adduced shows that the said defendants were to and

did throughout said period of time install, and aid, assist in and further the installation in Chicago of electrical appliances manufactured in states other than the State of Illinois.

(3) It is charged that the defendants were to influence and cause the electrical workers, members of Local 134, to refuse to and not to install electrical appliances manufactured in states other than Illinois; whereas the evidence tends to prove that the defendants were not to and did not influence and cause the electrical workers, members of Local 134, to refuse to and not to install electrical appliances manufactured in states other than Illinois.

(4) It is charged that the defendants were to prevent by force and violence the installation by persons other than members of Local 134 of electrical appliances manufactured in states other than the State of Illinois, whereas the evidence adduced tends to show that defendants did not prevent the installation of such appliances by force and violence.

7. The evidence adduced does not show the inception or continuance of a conspiracy and does not show that said defendants were parties to any alleged conspiracy at its inception; did not know that any alleged conspiracy ever existed; and did not at any time participate in said alleged conspiracy nor did not commit any overt act in pursuance thereof.

EDW. R. LITZINGER,
Attorney for Said Defendants.

FORM NO. 9

Motion in Arrest of Judgment.

Boyle v. United States, 259 Fed. 803 (C. C. A. 7th Cir.).

(Title of Cause.)

Now on this twenty-first day of March, 1917, come Otis B. Duncan, Warren Ripple, Julian J. Neilsen, James Obermiller, Gustave W. Berthold, Edward E. Berthold, Charles J. Peterson, Charles Kreider, John Cuthbert, J. Lang Electrical Company, States Electric Company, Electric Apparatus Company, Henry Newgard & Company and Cuthbert Electrical Manufacturing Company, defendants in the above entitled cause, by

their counsel, Robert W. Childs, and each of said defendants for himself moves that the judgment in the above entitled cause be arrested as to them, the said defendants, and each of them, upon the following grounds and for the following reasons:

1. The facts set forth in the indictment, or in any count thereof, do not show the commission of any offense by the defendants or any of them against any law of the United States.

2. The allegations in the indictment or any count thereof, do not show the commission by the defendants or any of them of the offense of having conspired, combined or agreed to restrain interstate commerce.

3. The indictment, or any count thereof, does not charge any offense against the laws of the United States, nor does it charge them with the offense of conspiring, combining or agreeing to restrain interstate commerce, nor does it charge the doing of anything, the doing of which is forbidden by any of the laws of the United States.

4. The verdict of the jury is not supported by the evidence in the case.

5. The evidence in the case does not prove, or tend to prove that the said Otis B. Duncan, Warren Ripple, Julian J. Neilsen, James Obermiller, Gustave W. Berthold, Edward E. Berthold, Charles J. Peterson, Charles Kreider, John Cuthbert, J. Lang Electrical Company, States Electric Company, Electric Apparatus Company, Henry Newgard & Company and the Cuthbert Electrical Manufacturing Company, or any or either of them, was a member of the said conspiracy charged in the indictment or any count thereof.

6. The evidence in the case does not prove, or tend to prove that the said Otis B. Duncan, Warren Ripple, Julian J. Neilsen, James Obermiller, Gustave W. Berthold, Edward E. Berthold, Charles J. Peterson, Charles Kreider, John Cuthbert, J. Lang Electrical Company, States Electric Company, Electric Apparatus Company, Henry Newgard & Company and the Cuthbert Electrical Manufacturing Company, or any, or either of them, was guilty of the offense charged in the indictment, or any count thereof.

7. The evidence in the case does not prove, or tend to prove

that the said Otis B. Duncan, Warren Ripple, Julian J. Neilson, James Obermiller, Gustave W. Berthold, Edward E. Berthold, Charles J. Peterson, Charles Kreider, John Cuthbert, J. Lang Electrical Company, States Electric Company, Electric Apparatus Company, Henry Newgard & Company, and the Cuthbert Electrical Manufacturing Company, or any, or either of them, was guilty of the offense charged in the indictment within the three years beginning April 27, 1912, and ending April 27, 1915.

8. The verdict in said case, if supported by any evidence at all, is not sustained by sufficient evidence, and is contrary to the manifest weight of the evidence.

9. Said indictment and each count thereof does not sufficiently state or aver or by sufficient averment show any violation by said defendants or any of them of any law of the United States.

10. The matters and things alleged in the indictment and in each and every count thereof do not constitute an offense against the United States.

11. Said indictment and each count thereof is vague, uncertain and indefinite, and does not sufficiently state or aver or set forth the alleged offenses charged in said counts against said defendants, or the acts and facts constituting to apprise said defendants of the crime or offense with which they therein stand charged.

12. Said counts are vague, uncertain, indefinite, and insufficient in that the same do not sufficiently aver or state the elements of the alleged crime or offense therein charged, nor the ingredients of which said alleged crime or offense is composed.

13. The acts charged in said indictment and in each count thereof have no relation to interstate commerce.

14. The indictment and no count thereof alleges any fact or facts showing that the trade was restrained or that interstate commerce was hindered or interfered with.

15. The alleged conspiracy in said indictment and each count thereof refers and relates to matters exclusively within the jurisdiction of the State of Illinois and not to matters within the inhibition of the statutes of the United States.

16. There is no sufficient showing said indictment or any count thereof of unlawful means used by said defendants or any

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of them, in carrying out the alleged conspiracy or combination.

17. There is no sufficient allegation in said indictment or any count thereof charging these defendants with being parties to any unlawful contract, conspiracy or combination.

18. The indictment or no count thereof sets forth any contract to which said defendants were parties, which contract was in violation of any statute of the United States.

19. Neither the indictment nor any count thereof alleges any fact or facts which shows that the defendants were parties to any unlawful contract, conspiracy or combination in restraint of interstate trade or commerce.

20. The allegations charging the said defendants in the indictment and in each count thereof with a violation of law are conclusions of law.

21. The indictment and each count thereof fails to allege or show that the said defendants were parties to any unlawful conspiracy, combination or contract within three years next prior to the return of the indictment.

22. Counts eight and nine of said indictment are indefinite and vague and do not charge an offense because they fail to show how the contracts set forth and referred to therein are in restraint of trade or commerce between the states.

23. The indictment and each count thereof is indefinite and vague and sets forth no offense because it fails to show whose commerce was restrained and the facts as to how and when such restraint took place.

24. The indictment and each count thereof is indefinite and vague and sets forth no offense because it fails to show how the conspiracy or combination restrained interstate trade or commerce.

25. The indictment and each count thereof is vague, indefinite and uncertain in that they fail to show facts describing the character of the conspiracy, combination or contract in restraint of interstate commerce and how such conspiracy, combination and contracts restrained interstate trade and commerce.

ROBERT W. CHILDS,
Attorney for Said Defendants.

FORM NO. 10

Order Overruling Motion for New Trial and in Arrest of Judgment.*Boyle v. United States*, 259 Fed. 803 (C. C. A. 7th Cir.).

The United States }
 vs. } No. 5648.
Michael Boyle, *et al.* }

This cause coming on to be heard on the motion of the defendants for a new trial herein, come the parties by their attorneys and the court having heard the arguments of counsel and being fully advised in the premises, overrules and denies said motion to which order of the court the defendants by their attorneys duly except and enter their motion in arrest of judgment and this cause coming on to be heard on said motion in arrest of judgment the court having heard the arguments of counsel and being fully advised in the premises, overrules said motion in arrest of judgment to which order of the court the defendants by their attorneys duly except.

FORM NO. 11

Judgment and Sentence.*Boyle v. United States*, 259 Fed. 803 (C. C. A. 7th Cir.).

The United States }
 vs. } No. 5648.
Michael Boyle, *et al.* }

Comes the United States by United States Attorney, comes also the defendant Gustave W. Berthold in his own proper person to have the sentence and judgment of the Court pronounced upon him, he having heretofore, to wit, on Saturday, March 3, 1917, been adjudged guilty by a jury in due form of law as charged in the indictment filed herein against him, and the defendant being asked by the court if he has anything to say why the sentence and judgment of the court should not now be pronounced upon him and showing no good and sufficient reasons why sentence and judgment should not be pronounced, It is therefore considered and ordered by the court and is the sentence and judgment of

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the Court upon the verdict of guilty so rendered by the jury as aforesaid that the defendant Gustave W. Berthold forfeit and pay to the United States a fine in the sum of five hundred dollars besides the costs in this behalf expended, and that execution issue therefor, thereupon the defendant by his attorney enters his motion for a writ of error which will be allowed upon the filing of a bond in the sum of five thousand dollars which bond shall act as a supersedeas, the defendant to file his bill of exceptions herein within thirty days.

[Similar judgments were entered against the other defendants with varying sentences.]

FORM NO. 12

Order Allowing Writ of Error — Sherman Act.

Boyle v. United States, 259 Fed. 803 (C. C. A. 7th Cir.).

(Title of Cause.)

On this 5th day of September, 1917, came before the undersigned Michael Boyle, Frank A. Lundmark, Raymond Cleary, Otis B. Duncan, Warren Ripple, Julian J. Neilsen, James Obermiller, Gustave W. Berthold, Charles J. Peterson, Charles Kreider, John Cuthbert, Electric Apparatus Company, Henry Newgard and Company, defendants in the above entitled cause, and each of said defendants presented to the undersigned his petition for the allowance of a writ of error to the said District Court from the United States Circuit Court of Appeals for the Seventh Judicial Circuit, for the correction of errors complained of in said petition, together with his assignment of errors, intended to be urged by him in support of said writ of error, said petitions in behalf of the above named defendants and said assignments of error on behalf of each of the above named defendants having heretofore been filed in the above entitled cause in the office of the Clerk of said District Court in accordance with the rule of said United States Circuit Court of Appeals.

Upon consideration whereof, It is hereby ordered by the undersigned, in pursuance of the prayers of said petitioners for writs of error filed on behalf of each of the above named defendants, that writs of error be allowed to each of the above

ORDER ALLOWING WRIT OF ERROR—SHERMAN ACT [FORM 12

mentioned defendants, as prayed for in the petitions filed by them, the above named defendants, and that each of said writs of error operate as a supersedeas staying the execution of judgment and sentence pronounced in said District Court upon each of said above mentioned defendants during the pendency of said writs of error; and that, upon service of said writs of error, the said Michael Boyle be admitted to bail upon his entering into a good and sufficient bond in the sum of fifteen thousand dollars.

That said Frank A. Lundmark be admitted to bail upon his entering into a good and sufficient bond in the sum of twelve hundred dollars.

[Then follows a description of the amount of bail for each defendant.]

Each of said bonds to be conditioned as required by law, with surety to be approved by the Clerk of said District Court.

On further consideration whereof, it is also hereby ordered by the undersigned that the Clerk of the District Court make return of said writs of error allowed to the above named defendants, by transmitting to said United States Circuit Court of Appeals a single true copy of the record and bill of exceptions and proceedings and all things concerning the same in the above entitled cause, No. 5648, in said District Court, and also the several assignments of error and the several petitions for writs of error filed in the above entitled cause by the defendants above named, and that the time for returning said writs of error and the transcript of record in obedience thereto be extended for 120 days after the expiration of the time provided by law therefor.

It also appearing that the defendants have heretofore prepared and tendered to the United States a proposed bill of exceptions and have duly prayed that said bill of exceptions may be signed, settled and allowed as tendered, but that, owing to the length of said proposed bill of exceptions and the stress of other business, plaintiff, the United States, has not as yet had sufficient time to compare said proposed bill of exceptions with the transcript of the testimony and is desirous of a further extension of time, it is hereby ordered that the time for the settling, allowing and signing of said bill of exceptions

may be and is hereby enlarged for a period of (90) ninety days from the date hereof; and,

It is further ordered that said bill of exceptions, when so settled, allowed and signed, shall be settled, allowed and signed as of the 5th day of September, 1917, and shall thereupon be and become a part of the record in the above entitled proceedings to the same extent as if it has been signed, settled and allowed prior to the application for and the granting of the writs of error herein prayed.

Enter Sep. 5, 1917.

KOHLSAAT,
Circuit Judge.

FORM NO. 13

Citation.

Boyle *v.* United States, 259 Fed. 803 (C. C. A. 7th Cir.).

IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Eastern Division.

United States of America }
v.
Michael Boyle, *et al.* } No. 5648.

CITATION

United States } ss.
of America,]

The President of the United States, To the United States of America, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Seventh Circuit, to be holden at Chicago, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the District Court of the United States for the Northern District of Illinois, Eastern Division, wherein Michael Boyle, impleaded with Frank A. Lundmark, Raymond Cleary, Custer L. Hampton, Otis B. Duncan, Warren Ripple, Julian J. Neilsen, James Obermiller, Gustave W. Berthold, Edward E. Berthold, George A. E. Kohler, Franklin Kohler, Henry

INDICTMENT FOR VIOLATION OF SHERMAN ACT [FORM 14]

Newgard, Martin Newgard, Charles J. Peterson, Charles Kreider, Allen S. Pearl, John Cuthbert, J. Lang Electrical Company, States Electric Company, Electric Apparatus Company, Henry Newgard and Company, Delta-Star Electric Company, and Cuthbert Electrical Manufacturing Company, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said Michael Boyle, plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable C. C. Kohlsaat, Judge of the Circuit Court of Appeals for the 7th Circuit of the United States, this 5th day of September, in the Year of Our Lord One Thousand Nine Hundred and Seventeen.

KOHL SAAT

United States Circuit Judge.

Service of the above citation is accepted this 5th day of September, A. D. 1917.

ROBT. T. NEILL,
Special Asst. United States Attorney.

FORM NO. 14

Indictment for Violation of Sherman Act.

Nash v. United States, 229 U. S. 373.

That heretofore, to-wit: on the first day of May, in the year of our Lord one thousand nine hundred and seven, American Naval Stores Company, a corporation duly organized and existing under and by virtue of the laws of the State of West Virginia; National Transportation and Terminal Company, a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey; one Edmund S. Nash, one Spencer P. Shotter, one J. F. Cooper Myers, one George Meade Boardman, one C. J. DeLoach, whose further given name is to the grand jurors aforesaid unknown, and one Carl Moller, within said division and district and within the jurisdiction of this Court, unlawfully and knowingly amongst themselves and with divers other persons to the grand jurors aforesaid unknown, combined, conspired,

confederated and agreed together to restrain trade and commerce among the several States of the United States and with foreign nations.

For that said American Naval Stores Company was, from the first day of May, A.D. 1907, up to and including the date of the finding of this bill of indictment, a corporation duly organized and existing under and by virtue of the laws of the State of West Virginia, with its principal office in the City of Savannah, County of Chatham, within the Eastern Division of the Southern District of Georgia, and having branch offices in the City of New York, in the State of New York; Philadelphia, in the State of Pennsylvania; Chicago, in the State of Illinois; St. Louis, in the State of Missouri; Cincinnati, in the State of Ohio; Louisville, in the State of Kentucky; Wilmington, in the State of North Carolina; Brunswick, in the State of Georgia; Jacksonville, Tampa, Pensacola and Fernandina, in the State of Florida; New Orleans, in the State of Louisiana; Mobile in the State of Alabama, and Gulf Port, in the State of Mississippi, and divers other places to the grand jurors aforesaid unknown, and was during all of said time engaged in trade and commerce among the several States of the United States and with foreign nations, within the true intent and meaning of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies"; that is to say, was engaged in buying, selling, shipping and exporting spirits of turpentine, rosin and the products of pine forests and turpentine farms, commonly called naval stores, within the States of Georgia, North Carolina, South Carolina, Florida, Alabama, Mississippi, Louisiana and divers other states of the United States, and divers European countries, to the grand jurors aforesaid unknown, and engaged in buying spirits of turpentine, rosin and the products of pine forests and turpentine farms commonly known as naval stores, in the States of Georgia, North Carolina, South Carolina, Florida, Alabama, Mississippi and Louisiana and shipping said spirits of turpentine, rosin and the products of pine forests and turpentine commonly known as naval stores to and selling the same in the States of New York, Massachusetts, Pennsylvania, Kentucky, Ohio, Illinois and the countries of Great Britain, Germany, Belgium

INDICTMENT FOR VIOLATION OF SHERMAN ACT [FORM 14]

and divers other states and divers other foreign nations to the grand jurors aforesaid unknown; and that during said time said Edmund S. Nash was the president and chief executive officer of said American Naval Stores Company; and the said Spencer P. Shotter was the chairman of the Board of Directors and one of the principal executive officers of said American Naval Stores Company; and said J. F. Cooper Mayers was the vice president and one of the chief executive officers of said company, and said George Meade Boardman was the treasurer and one of the chief executive officers of said company, and said C. J. DeLoach was the secretary and one of the principal officers of said company, and the said Carl Moller was the manager of the Jacksonville, Florida, branch and an agent and employe of said company; and that from said first day of May, 1907, up to and including the date of the finding of this bill of indictment, the said National Transportation and Terminal Company was and now is a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey, and owning and controlling water houses and terminal facilities for handling spirits of turpentine, rosin and the products of pine forests and turpentine farms, commonly known as naval stores, at Fernandina, Jacksonville, Tampa, Pensacola, in the State of Florida; Mobile, in the State of Alabama; Gulf Port, in the State of Mississippi, and divers other ports and places within the United States to the grand jurors aforesaid unknown, and at said named ports and places engaged in storing spirits of turpentine and rosin on the yards and in tanks and issuing warehouse receipts against and representing said spirits of turpentine and rosin, making contracts for the storage thereof and collecting therefor; and that during all of said time said J. F. Cooper Mayers was the president and chief executive officer of said National Transportation and Terminal Company and the said C. J. DeLoach was the secretary and one of the principal executive officers of said National Transportation and Terminal Company, and the said Carl Moller was the manager of the Jacksonville, Florida, branch of said National Transportation and Terminal Company and an agent and employe thereof; and that on said first day of May, in the year of our Lord one thousand nine hundred and seven, the said American Naval

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Stores Company, said National Transportation and Terminal Company, the said Edmund S. Nash, said Spencer P. Shotter, said J. F. Cooper Myers, said George Meade Boardman, said C. J. DeLoach and said Carl Moller, within the Eastern Division of the Southern District of Georgia and within the jurisdiction of this Court, did unlawfully combine, conspire, confederate and agree together to restrain trade and commerce among the several States of the United States and with foreign nations in the aforesaid articles of commerce between the several States and foreign nations, to-wit: spirits of turpentine, rosin and the products of pine forests and turpentine farms, commonly called naval stores.

THE MEANS

The said restraint of trade and commerce among the several States and foreign nations to be effected, amongst other ways, as follows:

By controlling, manipulating and arbitrarily bidding down and depressing in the market and market price of spirits of turpentine and rosin, so that competitors and producers could not sell said articles of commerce except at ruinous prices.

By coercing and causing naval stores receipts, which would normally and naturally flow to one port of the United States to be diverted to another port of the United States.

By purchasing thereafter at divers times a large part of its supplies at naval stores ports known as closed ports and willfully and with the deliberate intent and purpose of depressing the market, refraining from purchasing any appreciable part of its supplies of naval stores on the Savannah market where its purchases, if made, would tend to strengthen prices and market therefor, the said Savannah market being the basis or primary market in the United States for naval stores, and the said defendants taking the receipts at said closed ports of Pensacola, Tampa, Fernandina, Gulf Port and Mobile on a basis of the market at Savannah.

By coercing factors and brokers into entering into contracts with said defendants for the storage and purchase of their receipts, and refusing to purchase from such factors and brokers unless such contracts were entered into.

By circulating and publishing false statements as to naval stores

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production and stocks in hands of producers and their immediate representatives.

By issuing and causing to be circulated and hypothecated fraudulent warehouse receipts.

By fraudulently grading, regrading and raising grades of rosins and falsely gauging spirits of turpentine.

By attempting to bribe employes of competitors and factors so as to obtain information as to competitors' business and stocks.

By inducing consumers by payment of bonuses and threats of boycotts to postpone dates of delivery of contract supplies, thus enabling defendants to refrain from purchasing such supplies, which purchases would tend, if made, to strengthen the market and prices.

By making tentative offers of large quantities of naval stores under prevailing markets, intending then and there to accept only contracts for small quantities, and to cover these sales by subsequent purchases to be made on a market thus depressed by the aforesaid fraudulent offers.

By at divers times selling spirits of turpentine and rosin at prices far below the actual cost to themselves, so as to compel competitors to meet said prices, which said prices would be ruinous to themselves as well as to their competitors.

By willfully and arbitrarily fixing the price of spirits of turpentine in the United States below the cost of production — each and all of the foregoing means being for the purpose of crushing competitors and driving them out of business, and preventing competitors from engaging in such trade and commerce among the several States and foreign nations in the aforesaid articles of commerce, and destroying competition and restraining trade in the aforesaid articles of commerce; contrary to the form of the statutes in such cases made and provided, and against the peace and dignity of the said United States.

The Nash case came before the United States Supreme Court on a writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit and involved the validity of the criminal provisions of the Sherman Act, which were sustained by the Court, but the judgment was reversed on other grounds.

FORM NO. 15

Petition for Certiorari — Sherman Act.

Granted in Nash *v.* United States, 229 U. S. 373.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1910

EDMUND S. NASH, ET AL.,
Petitioners,

AGAINST

THE UNITED STATES,
Respondent.

To THE HONORABLE THE CHIEF JUSTICE AND ASSOCIATE
JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioners, Edmund S. Nash, Spencer P. Shotter, J. F. Cooper Myers, George Meade Boardman and Carl Moller, respectfully represent that on the 11th day of April, 1908, an indictment was found against them, against two corporations, the American Naval Stores Company and the National Transportation and Terminal Company, and against C. J. DeLoach, in a case sounding The United States *v.* the American Naval Stores Company, *et al.*, in the United States Circuit Court for the Southern District of Georgia and Eastern Division; the said indictment being based on an act of Congress passed July 2d, 1890, commonly known as the Sherman Anti-trust Act. The said indictment contained three counts.

That on the 12th day of April, 1909, the cause came on to be heard, and a demurrer was filed by all the defendants, including the two corporations and C. J. DeLoach, and the same was heard by the HON. WILLIAM B. SHEPPARD, a United States District Judge for the Northern District of Florida, designated to hold the Court. After argument the demurrer was sustained as to the third count and overruled as to the first and second counts.

The first count undertook to charge a conspiracy to restrain trade, and that as a part of this conspiracy certain means set

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forth in the count were stated. The second count charged a conspiracy to monopolize trade by the use of identically the same means. The pleader elected to make two counts out of identically the same means. Neither of the two counts charged any overt act of any kind, nor that anything was done in pursuance of the alleged conspiracy, and both included the means as a part of the conspiracy agreement.

The defendants plead not guilty, and on the 10th day of May, 1909, the jury in the said case found a verdict convicting your petitioners on the first and second counts, acquitting the defendant DeLoach (the Government at the conclusion of the testimony having abandoned the case as to DeLoach), but made no return as to the corporate defendants, the verdict being silent as to them.

The case was taken to the United States Circuit Court of Appeals for the Fifth Circuit by your petitioners on a writ of error, and was argued before the Court of Appeals on the 4th and 5th days of October, 1909, the said court being composed of the Honorable DON A. PARDEE and DAVID D. SHELBY, Circuit Judges, and the Honorable RUFUS E. FOSTER, District Judge.

On the 29th day of November, 1909, nearly fourteen months after the argument, the said Circuit Court of Appeals handed down a decision of which the following is a complete copy: "A majority of the Court is of opinion that there is no error in the record. The judgment of the Circuit Court is therefore affirmed."

On the 15th day of December, 1910, your petitioners filed in the said Circuit Court of Appeals a petition for a re-hearing, and this petition was denied on the 20th day of December, 1910, without further opinion.

Petitioners pray the Court for a writ of *certiorari* and submit that this is a proper case for the granting of said writ, and for the following among other reasons:

I

The great importance of the Act involved to the business world and the legal profession, and the need of an authoritative and elucidating decision, particularly as to the penal provisions of the Act.

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Except the recent case of *United States v. Kissell, et al.*, involving the statute of limitations, no criminal case based on this statute has ever been before this Court.

Save only the case of *United States v. Union Pacific Coal Company, et al.*, reported in 173 Federal, 737, and the case of these petitioners, no case involving the penal provisions of this statute has ever been before any United States Circuit Court of Appeals.

Your petitioners Shotter and Myers are the first men sentenced to imprisonment for violation of this statute whose case has ever come before this Court, or any United States Court of Appeals, and the judgment against them by the Circuit Court of Appeals was made by a divided Court without opinion after a deliberation of fourteen months.

II

Despite the fact that the Sherman Act has been upon the statute books for twenty years without amendment, it may be safely said that the inferior Federal Courts and the Bar and those engaged in trade and commerce are in distressful doubt as to the true scope and construction of the Act, and as to what may or may not be lawfully done without violating its provisions. As the trial judge in this case said, at page 39 of the record: "Owing to the distressing uncertainty of the penal sections of the Act under which the prosecution is maintained, it is difficult to see what acts or conduct would come within the purview of the statute." It is the expectation that some part of this uncertainty will be removed by the decisions of this Court in the Standard Oil and Tobacco Cases now before it and set for argument on January 3d.

III

While this case raises novel questions of law not involved in either the Standard Oil or Tobacco cases now before the Court, nevertheless a reversal on the merits in either of those cases would almost certainly show that your petitioners were wrongly convicted; and unless this petition be granted it will then be too late to remedy the wrong caused thereby to your petitioners.

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The decision of the Circuit Court of Appeals in this case is not helpful in that it did not notice any of the questions involved, and it appears only that a majority of the Court found no error in the record. An exposition of the law was sought in the argument and in the petition for a rehearing. The Court was also asked to certify the legal questions to the Supreme Court.

IV

Under Chapter 544, Laws of 1903, 32 Stat. 823; U. S. Comp. Stat. 1905, p. 623; Part of § 2, Act Feb. 11, 1903, in civil causes arising under the Sherman Act, a direct right of appeal from a decision of the Circuit Court is given to this Court. No such right exists under the statutes as to criminal causes. It is submitted that at least in the case of the first conviction for crime under this statute a review should be granted, otherwise mere property rights are treated as being of more importance than the liberty of the citizen.

V

There is in this case a novel application of the Sherman Act not hitherto presented to this Court — or raised in the Tobacco or Standard Oil cases.

The record shows testimony which, the Government alleges, and which we deny, proved that certain employees of the corporation of which petitioners were officers swindled and cheated customers in another state, in certain isolated cases, by falsely labelling or falsely measuring goods. There is no proof that petitioners knew of these acts or had anything to do with them; or had any agreement or intent to do them or caused them to be done. The theory of the Government is that this proof of isolated violations of State law, standing alone, warrants a conviction for conspiracy under the Sherman Act. This case raises the question of the correctness of that proposition. If it be sound law, then the Sherman Act has transformed crimes against the several states into crimes against the nation.

The point is further illustrated by the following statement of the facts: The only trader in the case is the American Naval

Stores Company. The other corporate defendant is not alleged or shown to be connected with trade in any way. It is a warehouse and terminal company only. The individuals are not alleged to be in trade on their own account, but are connected with the alleged conspiracy solely as officers of the American; all of the petitioners being such representatives.

There is no attack upon the formation of the American or of any other corporation mentioned in the evidence.

There was no effort made to show any combination or agreement between this trader and any other.

The theory of the Government is that this trader, after it was formed, attempted to increase its gains by doing things at Jacksonville, Florida, and Brooklyn, New York, which under the Government's theory were wrong and involved the violation of the State statutes touching cheating and swindling.

If this theory be sound, then a corporation trading in groceries could be convicted of a violation of this Federal statute, if it appeared that its officers and employees put sand in the sugar sold by them, or used false weights and measures, or did anything else that was criminal or wrong.

If this theory be sound, then any case of alleged fraud or conduct claimed to be ethically wrong in business tactics can be brought within the terms of this statute.

There is not any evidence to show any conspiracy agreement between petitioners. The Government endeavored to show by certain isolated acts, which it claimed involved cheating and swindling, but which upon their face having nothing to do with the Sherman Act, that a conspiracy agreement existed, and then that the acts were under the ban of the statute because of the conspiracy agreement. The argument is conspicuously one in a circle.

It was not even shown that your petitioners or any of them were connected with these isolated acts.

VI

The conspiracy is laid in the Eastern Division of the Southern District of Georgia. There is no evidence in the record that any offense was committed in said District or Division, and the Court

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was, therefore, without jurisdiction to try the case. This was error, but was more than mere error, it constituted want of due process of law.

As to three of the petitioners, there is no evidence that they had been within the District or Division within three years of the finding of the indictment.

By reference to page 79 of the record, the latter part, it will appear that the charge delivered to the jury on this subject as it was about to retire, is in the following words, to-wit:

“The conspiracy, the venue of this offense, will be where the conspiracy was formed; but a conspiracy may be formed by individuals residing in different States; or it may be carried from one District to another, if the object and purpose of that conspiracy has a means for transporting or been committed in another District than that which it was formed.”

That charge — which was the only part of the charge relating to the venue of the offense — was we believe so clearly erroneous, insufficient and misleading as to call for the reversal of the judgment.

VII

The Sherman Act does not contain what is within the authorities and upon general principles an adequate description of any criminal offense, and the demurrer raising this point ought to have been sustained.

This point has never been passed upon by any Court. It is not identical with the question as to the constitutionality of the law. It is based upon the principle contained in the maxim, “*Ube jus incertum, ibi jus nullum.*” To use the language of this Court in *United States v. Brewer*, 139 U. S. 288, “laws which create crime ought to be so explicit that all men subject to their penalties may know what acts it is their duty to avoid.”

“Before a man can be punished his case must be plainly and unmistakably within the statute.”

VIII

The verdict rendered is illegal, contradictory and illogical, and should not be made the basis of the sentences inflicted, particularly the jail sentences.

The only trader mentioned in the entire record is the American Naval Stores Company. The whole case turns around that Company. If any conspiracy was formed it was for and in behalf of that Company. If it be withdrawn from the record, there is nothing left in the case.

By reference to page 82 of the record it will be found that,

"The jury impanelled in the said cause, after they had been in their jury room considering their verdict about two and a half hours, returned into Court with their verdict, finding the defendants, Edmund S. Nash, Spencer P. Shotter, J. F. Cooper Myers, George Meade Boardman and Carl Moller, guilty on the first and second counts of the indictment, finding the defendant C. J. DeLoach not guilty and making no return as to the two corporate defendants, and no allusion to these corporate defendants. The jury was not interrogated as to these corporate defendants or either of them, and the verdict was rendered and the jury discharged. The instructions of the Court to the jury covered these two corporate defendants as completely as it did the individual defendants."

The theory of the Government on the trial was that the American Company conspired through the officers mentioned. The verdict means, it being tantamount to an acquittal of the American Company, that it did not conspire at all, and yet the verdict against these defendants means that it did conspire through these officers.

We have made this objection to the verdict not only by the motion in arrest of the judgment, but by the last assignment of error appearing at page 60 of the record.

IX

The indictment charges no offense against the United States for the reason that in neither count is it averred that either or any of the alleged conspirators did in said District or elsewhere "any act to effect the object of the conspiracy" as required by Section 5440 of the Revised Statutes of the United States. For that omission of any averment of "overt acts" said counts were demurred to, and the demurrer was overruled by the Court. This while error was not mere error, for a conviction and sentence under an indictment which charges no offense is not due process of law.

PETITION FOR CERTIORARI—SHERMAN ACT [FORM 15

On this point the rulings of the several Circuit Courts of the United States seem in direct conflict. In *U. S. vs. Reichert*, 32 Fed. 142, Mr. Justice FIELD, sitting at Circuit, was of opinion that such an overt act was an essential part of the crime and must be alleged. The practice of the Second Circuit is the same (see the indictment in *U. S. vs. Kissell* recently before this Court). The opinion of Mr. Justice PUTNAM in *U. S. vs. Patterson*, 55 Fed. 605, indicates a different view in accord with the view of the Court of Appeals in this case. It would seem necessary not only because of this difference between the circuits but because of the intrinsic importance of the question that it should be finally and promptly settled by this Court. It is important to know whether an illegal intention or agreement not followed by any act to carry it into effect (which under § 5440 of the Revised Statutes is a necessary element of every other criminal conspiracy to commit an offense) constitutes a crime.

For these and the other reasons indicated in the argument accompanying this petition we ask that the writ be granted.

Counsel represent to the Court, that, if said writ be granted, they firmly believe they will be able to demonstrate to this Court not only that there has been a clear mistrial but that there is in the record no evidence of guilt as to any of petitioners which justified a verdict against them even if the opinions of the lower courts in the Standard Oil and Tobacco cases have correctly interpreted the Sherman Act.

Your petitioners believe that the aforesaid judgment of the Circuit Court of Appeals is erroneous, and that this Honorable Court should require the said case to be certified to for its review and determination in conformity with the provisions of the Act of Congress in such cases made and provided.

WHEREFORE, your petitioners respectfully pray that a writ of *certiorari* may be issued out of and under the seal of this Court directed to the United States Circuit Court of Appeals for the Fifth Circuit commanding the said Court to certify and send to this Court, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings in said Circuit Court of Appeals in the said cases entitled, Edmund S. Nash, *et al.*, Plaintiffs in Error, *vs.* The United States, Defendant

FORM 15] COMBINATIONS AND CONSPIRACIES

in Error, Number 1951, to the end that the said case may be reviewed and determined by this Court as provided in Section 6 of the Act of Congress entitled "An Act to establish Circuit Courts of Appeals and to define and regulate in certain cases the jurisdiction of the Courts of the United States, and for other purposes", approved March 3, 1891, or that your petitioners may have such other and further relief or remedy in the premises as to this Court may seem proper and in conformity with the said Act, and that the said judgment of the Court of Appeals in the said case and every part thereof may be reversed by this Honorable Court. And your petitioners will ever pray.

STATE OF NEW YORK, } ss.:
County of New York, }

JOHN C. SPOONER and SAMUEL B. ADAMS, being duly sworn, say: that they are of Counsel for Edmund S. Nash, Spencer P. Shotter, J. F. Cooper Myers, George M. Boardman and Carl Moller, the foregoing petitioners; that they prepared the foregoing petition and that the allegations thereof are true as they verily believe.

Sworn to and Subscribed be- }
fore me this day of }
December, 1910. }

To THE RESPONDENT IN THE FOREGOING CASE:

You are hereby notified that we will submit to the Supreme Court of the United States the foregoing petition for a writ of *certiorari* at the opening of Court on the day of January, 1911.

FORM NO. 16

Indictment under Sherman Act — Conspiracy to Restrain Trade.

Belfi, *et al.* v. United States, 259 Fed. 822 (C. C. A. 3d Cir.).

The grand jurors of the United States of America, duly impaneled, sworn and charged to inquire in and for the Eastern District of Pennsylvania, and so inquiring, upon their oaths, do find and present as follows

Throughout the period of three years next preceding the return of this indictment ceramic, mosaic and encaustic tiles have been manufactured by divers concerns in divers States, including the following concerns in the following States:

Alhambra Tile Co., Newport, Ky.
American Encaustic Tiling Co., Ltd., Zanesville, Ohio.
Art Mosaic & Tile Co., Toledo, Ohio.
Atlantic Tile Mfg. Co., Matawan, N. J.
Beaver Falls Art Tile Works, Beaver Falls, Pa.
Brooklyn Vitrified Tile Works, Brooklyn, N. Y.
Brunt Tile & Porcelain Co., Columbus, Ohio.
Cambridge Tile Mfg. Co., Covington, Ky.
Grueby Faience & Tile Co., Boston, Mass.
Kenilworth Tile Co., Newell, W. Va.
Matawan Tile Co., Matawan, N. J.
Mosaic Tile Co., Zanesville, Ohio.
Mueller Mosaic Co., Trenton, N. J.
National Tile Co., Anderson, Ind.
Old Bridge Enameled Brick & Tile Co., Old Bridge, N. J.
Ostergard Tile Works, Perth Amboy, N. J.
J. B. Owens Floor & Wall Tile Co., Zanesville, Ohio.
Perth Amboy Tile Works, Perth Amboy, N. J.
C. Pardee Works, Perth Amboy, N. J.
Robertson Art Tile Co., Inc., Trenton, N. J., and Morrisville,
Pa.
Rook Wood Pottery Co., Cincinnati, Ohio.
Trent Tile Co., Trenton, N. J.
United States Encaustic Tile Works, Indianapolis, Ind.
Wheeling Tile Co., Wheeling, W. Va.

Throughout the said period of time such tiles have been sold and shipped by each of the above-named manufacturers to persons doing business as retailers of tiles in the States of Pennsylvania, New Jersey and Delaware, and in other States.

During the said period each of the following persons has been engaged in business as a retailer of tiles in the said States of Pennsylvania, New Jersey and Delaware, either in his own name or as the representative of a concern engaged in such business: A. P. Belfi, Constantine Belfi, Vincent Cianci, Louis

Deal, Reuben Fowler, John Greenwood, Charles Heidman, Edward P. Henry, J. Keenan, Frank Lowry, David Montgomery, Joseph Myers, Louis Pasquali, William Phillips, M. I. Ryan, Wesley Sloan, Angelo Trevisan, Harold Watts, Philip Williams, D. McDonald and Bernard Farrell. Throughout the said period of time the above-named persons (hereinafter called the defendants), and the concerns which they represented had their several principal offices at the city of Philadelphia in the said Eastern District of Pennsylvania and did, in the aggregate about ninety per cent. of the entire retail business in tiles in that State and did a similar business, but to a lesser extent, in the States of New Jersey and Delaware.

The business of a retailer of tiles was normally carried on during the said period of time, by the defendants and the concerns they represented and by other retailers doing business in the same region, in the following manner: The retailers entered into contracts, with architects, building contractors and owners of buildings, to furnish tiles and to install the same in buildings erected and to be erected. After securing a contract, the retailer would buy the tiles needed for its fulfilment at a factory and would cause them to be transported from the factory direct to the building in which they were to be installed. There the retailer would cause them to be set in place by skilled tile setters.

Of the tiles thus installed by the said retailers in each of the States of Pennsylvania, New Jersey and Delaware, large quantities were purchased by the said retailers at factories situated outside of the respective States where they were to be installed and were transported directly from such factories into the respective States where they were to be installed, to the buildings in which they were to be installed, and large quantities, which were purchased by the said retailers at factories in the respective States where they were to be installed, were transported directly from the factories, across the territory of other States than the respective States where they were to be installed, to the buildings in which they were to be installed. Thus the said retailers engaged in and carried on interstate trade and commerce in tiles with the manufacturers thereof.

The defendants and each of them, during the period of time

aforesaid, within the said Eastern District of Pennsylvania, unlawfully and knowingly engaged in a conspiracy to restrain other persons than themselves and the concerns which they represented from engaging in business as retailers of tiles in competition with the defendants and the concerns which they represented and from carrying on interstate trade and commerce, such as that above described, with the above-named manufacturers of tiles and other manufacturers of tiles to the grand jurors unknown, by the means hereinafter enumerated, in violation of the act entitled "An act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890.

The defendants employed the following means, during the said period of time, with the intention of carrying the said conspiracy into effect:

The defendants became officers and members and representatives of members of the Philadelphia Tile, Mantel and Grate Association, which was an association which comprised as members persons and concerns engaged in business as retailers of tiles in the city of Philadelphia and in that vicinity and which was organized for the purpose of securing concerted action amongst such retailers. The defendants met together weekly in that city as such officers and members and representatives of members. The defendants became, and caused the concerns represented by them to become, members of the Eastern District Mantel and Tile Dealers' Association and of the Interstate Mantel and Tile Dealers' Association of the United States of America, which associations stood for, and were known to aforesaid manufacturers of tiles to stand for, concerted opposition to sales by manufacturers of tiles to persons or concerns not associated together as retailers of tiles. The defendants refused to admit as members of the said Philadelphia Tile, Mantel and Grate Association concerns which applied to be so admitted and which sought to engage in business as retailers of tiles in competition with the defendants and with the concerns represented by the defendants and which endeavored to engage in and carry on interstate trade and commerce, as described above, with the above-named manufacturers of tiles and with other manufacturers of tiles to the grand jurors unknown. The defendants informed the aforesaid manufacturers of tiles and the

representative or "commissioner" of the Tile Manufacturers' Association and of the Tile Manufacturers' Credit Association, at Beaver Falls, Pennsylvania, which associations comprised the majority of the aforesaid manufacturers of tiles, that the said concerns which endeavored as aforesaid to engage in interstate trade as retailers of tiles in competition with the defendants and with the concerns represented by the defendants, and which were refused admission as aforesaid to the Philadelphia Tile, Mantel and Grate Association, were not members of that association. The defendants ascertained, through committees of the said association, and disclosed amongst themselves at the weekly meetings thereof, the names of the manufacturers aforesaid, and of other manufacturers to the grand jurors unknown, who made sales of tiles to the said concerns which endeavored as aforesaid to engage in interstate trade as retailers of tiles in competition with the defendants and with the concerns represented by the defendants and which were refused admission as aforesaid to the said association. The defendants informed the manufacturers aforesaid, and other manufacturers to the grand jurors unknown, who made such sales to such concerns that the defendants and the concerns represented by the defendants would refuse to buy from manufacturers who made such sales, because of such sales. The defendants made speeches at the aforesaid weekly meetings of the Philadelphia Tile, Mantel and Grate Association urging that the members of that association should refuse to buy from manufacturers who made such sales, because of such sales, that is to say, should "boycott" such manufacturers. The defendants did so refuse to buy from manufacturers aforesaid, and from other manufacturers to the grand jurors unknown, who made such sales, that is to say, they "boycotted" those manufacturers. The defendants induced the members of Ceramic, Mosaic and Encaustic Tile Layers' Union No. 13, comprising a large majority of the skilled tile setters in Philadelphia and vicinity, and their representatives, to make threats to manufacturers aforesaid who made such sales that the members of the said union would refuse to set tiles produced by manufacturers who made such sales, that is to say, would "boycott" those manufacturers. The defendants entered into a written contract with the said union to the

ARRAIGNMENT AND JOINDER OF ISSUE [FORM 17]

effect that its members would work for the members of the Philadelphia Tile, Mantel and Grate Association in preference to non-members of that association and entered into an oral agreement and understanding with the authorized representatives of the said union that the members of the said union would not set tiles for non-members of the said association.

And so the grand jurors, upon their oaths, do find and present that the said defendants, A. P. Belfi, Constantine Belfi, Vincent Cianci, Louis Deal, Reuben Fowler, John Greenwood, Charles Heidman, Edward P. Henry, J. Keenan, Frank Lowry, David Montgomery, Joseph Myers, Louis Pasquali, William Phillips, M. I. Ryan, Wesley Sloan, Angelo Trevisan, Harold Watts, Philip Williams, D. McDonald and Bernard Farrell, during the period of three years immediately preceding the return of this indictment, in the manner aforesaid, in the Eastern District of Pennsylvania, engaged in a conspiracy in restraint of trade and commerce among the several States, against the peace and dignity of the United States, and contrary to the form of the statute in such case made and provided.

FRANCIS FISHER KANE,
United States Attorney.

Philadelphia, Pa.,

December 5, 1917.

Montgomery, Joseph Myers, Louis Pasquali, et al.

True Bill. A. J. Toland, Foreman.

Indictment: Conspiracy to Restrain Trade.

Filed Dec. 6, 1917. Wm. W. Craig, Clerk. By L, Deputy Clerk.

FORM NO. 17

Arraignment and Joinder of Issue.

Belfi, et al. v. United States, 259 Fed. 822 (C. C. A. 3d Cir.).

(Title of Cause.)

And now, this 20th day of December, A. D. 1917, the defendants, A. P. Belfi, Vincent Cianci, Louis Deal, Reuben Fowler, Edward P. Henry, J. Keenan, David Montgomery, Joseph Myers, Louis Pasquali, M. I. Ryan, Angelo Trevisan, Philip Williams and

Harold Watts, being arraigned, say they are not guilty in manner and form as they stand indicted, and of this, etc.

Jany. 22, 1918. The defendant Daniel McDonald being arraigned says he is not guilty, etc.

Jany. 1918. Bernard Farrell pleads "Not Guilty."

Feby. 4, 1918. Wesley Sloan, Charles F. Heidman, John Greenwood, Wm. H. Phillips, Frank Lowry plead "Not Guilty."

Feby. 6. Constantine Belfi pleads "Not Guilty."

The Attorney of the United States replies Similiter et issue. Therefore, &c.

FORM NO. 18

Bill of Exceptions — Sherman Act.

Belfi, et al. v. United States, 259 Fed. 822 (C. C. A. 3d Cir.).

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

United States of America

v.

<i>A. P. Belfi, Constantine Belfi, Vincent Cianci, Louis Deal, Reuben Fowler, Edward P. Henry, Frank Lowry, M. I. Ryan, Angelo Trevisan and Harold Watts.</i>	} September Term, 1917. No. 39.
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BILL OF EXCEPTIONS ON BEHALF OF DEFENDANTS

BE IT REMEMBERED, That in the term of September, 1917, No. 39, came the said United States of America into the said court and impleaded the said defendants in a certain bill of indictment of conspiracy to restrain trade in violation of the act entitled, "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890, in which the said United States of America declared (proud narr.), and the said defendants pleaded not guilty (prout pleas). And thereupon issue was joined between them.

And afterwards, to wit, at a session of said court, held at Philadelphia, Pennsylvania, before the Honorable Oliver B. Dickinson, Judge of said court, on the second day of April, 1918, the aforesaid

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issue between the said parties came to be tried by a jury of said Eastern District of Pennsylvania, for that purpose duly impaneled (prout list of jurors), at which day came as well the said complainant as the said defendants, by their respective attorneys, and the jurors of the jury aforesaid impaneled to try the said issue, being also called, came, and were then and there in due manner chosen and sworn or affirmed, respectively, to try the said issue, and upon the trial the counsel of the said United States of America, to sustain the issue on its part, produced the following testimony:

GOVERNMENT'S EVIDENCE

S. FRANK WILLIAMSON, having been duly sworn, was examined and testified as follows:

By MR. MITCHELL: (Here follows the testimony ; — proceedings and exceptions.)

Thereupon the Court charged the jury.

FORM NO. 19

Charge of the Court and Exceptions by Counsel — Sherman Act.

Belfi, et al. v. United States, 259 Fed. 822 (C. C. A. 3d Cir.).

(Title of Cause.)

HON. OLIVER B. DICKINSON, J.

Gentlemen of the jury : I shall endeavor to make myself heard by all of you, but in this room at times it is so difficult to hear, that if any of you should miss anything that is said, you will indicate it by holding up your hand, and I will repeat it for your benefit.

We are trying this case on the criminal side of the court, but it is really a proceeding to enforce a policy of the law. That policy is to preserve the free flow of commerce, that the channels of commerce may be open to everyone, free to everyone, and shall be left unobstructed by anyone. To enforce that policy of the law Congress from time to time has passed different acts. With one of them we are concerned here. It is what is commonly known as the Sherman Act, or the Sherman Law, being named because of its promoter, or whom we may call its author. One provision

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of that law I will read to you, because it is the one with which we are particularly concerned. It is as follows:

"Every contract, combination, in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal."

Then it proceeds to provide that anyone exerting the prohibited restraint, or entering into the prohibited combination, shall be declared guilty of a misdemeanor, and the consequences provided by law shall follow.

The first observation I have to make upon that is to call to your attention that the law in this and its other provisions may be justly characterized as a fair-play law. It is intended to make sure that everyone shall have an equal right and an equal opportunity to engage in the trade and commerce of the country. That the policy is a wise one is evident, of course, at first glance, because it would be an intolerable thing if men, or a certain number of them, were permitted to combine themselves together, and prevent others from engaging in trade or commerce in order that they who were in the combination might secure a monopoly to themselves. Being a fair-play law, it makes the same appeal to our sense of fairness. It calls upon us in the application of this law and in the enforcement of it to carry out this wise policy which has been proclaimed. We are called upon in the same spirit of fairness to see that proper treatment and consideration are accorded to the great business interests which are concerned with laws of this kind, and which play such a large and important part in the lives of all of us, and, of course, our sense of fairness is challenged to see to it that the defendants are tried impartially and fairly under this law.

Let us see what it is. You will observe that there are three thoughts presented by the law. One is that there must be a combination, an acting in concert, a formation of a trust, as it is expressed in this law, and as it has passed into the common language of our people, or there must be what is termed here a conspiracy. All those words, together with the words "agreement" and "contracts" which are prohibited, all carry the idea that more than one person is concerned. That is the first thought you must get into your minds.

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You have here before you a large number of defendants, I think twenty-one in all, and it is for you to determine whether they are all concerned in this unlawful combination, if you should find there has been one, or if not all of them, which of them, but you must find that at least two of them are concerned in it, because it is perfectly obvious to everyone that this is the kind of an offense of which no one person by himself can be guilty. There must be at least two.

Another thought which is conveyed to us by the law is this, that there must have been as the end and purpose of the combination the intention to restrain trade and commerce, to interfere with it, to interrupt its flow, and the third thought is — each and all are of importance, but I particularly wish to emphasize the third thought, because it has an important bearing upon this case, that the trade and commerce which is restrained must be interstate commerce, it must be the trade and commerce which, if left untrammeled, would flow across State lines.

In order to make that perfectly clear, without meaning, of course, to have it understood that the defendants have been guilty of this limited restraint of commerce, but for the purpose of illustration, in order that you may understand the distinction which I am attempting to make clear to you, supplies, material, manufactured in other States, may be brought across the State line into Pennsylvania, or we will say right here in our city of Philadelphia, and men engaged in business here might combine among themselves to control the local trade to which those supplies or material were ultimately destined to go, but if they kept on this side of the State line, both in the purpose of their combination, and in the actual carrying of it out, so that it did not interfere with interstate commerce, whatever offense they might have committed against the State laws, they would not have committed an offense against this Act of Congress, because, you see, it concerns itself only with interstate commerce, and the combination, whatever it was, in order to make the defendants guilty under this law, must have been a combination which had as its objective the restraint of this commerce, the character of commerce which I have characterized as interstate.

Bearing upon or somewhat upon that same point, you have

heard the changes wrung upon the agreement or understanding, written or existing outside of the writing, through and by which it has been asserted before you the defendants sought to dominate and control the local business through and by means of the arrangement to which I have adverted, by which anyone other than members of their association would be prevented from engaging in the tile business, because they would at least experience difficulties, if they were not wholly prevented, from setting the tile after they had brought it here, and the query which naturally arises in your minds would be, "Well, as that apparently only affects local business, a local monopoly, a restraint of local trade, why was that permitted to come into the case?" Of itself it has no business in the case, because it obviously does not concern interstate commerce, but it has this to do with the case, if that arrangement or understanding was reached, and they used it as an instrument — the defendants went across the State line and presented that to a manufacturer in another State, in the State of New Jersey, for instance, or, to be more specific, in the city of Trenton, and held up to him that if he shipped across the State line to Philadelphia, Pennsylvania, supplies or material manufactured by him, that the parties who did not wish him to do that would, in the common language of the day, boycott his manufacture by refusing themselves to buy any material or supplies from him, and it was, therefore, permitted to go in; not, let me repeat, because in itself, and by itself, it would have been a restraint of interstate commerce, but because it would have been an instrument, a means, by which a manufacturer in another State would be restrained — would be constrained from making shipments into Philadelphia, Pennsylvania, across the State line because he would be deterred by the threatened consequences, and there, I am sure, you get the distinction.

These defendants, admittedly — I do not understand that fact to be in controversy — had entered into a combination, an agreement or an association. It was for the general purposes which have been described, for the betterment of the conditions of the trade, for its educational benefit and advantage to themselves, to formulate and to hold all of its members to a higher standard in the transaction of their business. Of course, no one

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would ever criticise an organization of that kind, much less ask to have it condemned as unlawful or illegal. An organization of that kind is perfectly legitimate, perfectly proper, and most highly commendable. Men in all trades and in all professions and in all callings of life have these associations. They have their purposes. They are perfectly proper, and, as I have said, perfectly legitimate and commendable. But if, no matter how worthy the motive of this organization, no matter how commendable the main objects which they held before them, as their chief purpose and end in combining together, if they either originally intended, or whether they originally intended or not, if they permitted the other purpose to come into view, and attempted and sought to accomplish the other object, to wit, the restraint of interstate commerce, then no matter how worthy their motives were, in their original organization, they have done that thing which the law condemns.

A great deal has been said, much more, perhaps, than you would think there was any occasion to say, about that agreement or understanding with Local Union No. 13. I do not understand it to be denied by those who were active in the association — I may be wrong, and I hope counsel will correct me if I am — but I understand Mr. Ryan frankly to avow that originally when the proposition was first presented, the members of Local Union No. 13 asked the association to pledge themselves to employ none others than members of the union, and he and the other members of the organization (and you can readily see how it would have so impressed them) thought it no more than right that they should ask for a reciprocal agreement, and make that part of the arrangement mutual by the members of Local Union No. 13 agreeing on their part that they would accept employment with no one other than members of the association, and, as I understood the testimony offered in the case, the agreement was, in fact, drafted in that form. Someone criticised it as of doubtful propriety, and, therefore, it was changed from the absolute undertaking on the part of the members of the union to accept employment with none other than members of the association into a preferential arrangement, that they would, in the first instance, give their services to members of the union.

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It is my duty to say to you that if they had made that arrangement with Local Union No. 13, if the union had been willing to accept of it (although we can see that they would have had a sensible business objection to having accepted of it), but notwithstanding that objection, if they had accepted of it, and that arrangement had been made, it is my duty, I repeat, to say to you, that if its operation had been limited and confined to the setting of tile after it had run its course, as a part of interstate commerce, if it had ceased to be interstate commerce before that agreement operated upon it, then it would not be an offense against this law, because that arrangement would not have been either a combination to restrain interstate commerce, nor would it have had that immediate and direct effect. But let me repeat again, whether they had that written contract, whether they had what has been called, with some inaccuracy, a verbal contract, whether they had any contract at all, or nothing beyond an understanding — "Now we have asked you to do this; it appears that it would be a dangerous thing for you to agree to it, but without agreeing to it in writing, without agreeing to do it in so many words, let us have an understanding that you will do it anyhow", and if having that instrument in their hands, a means by which they could restrain, could hamper, could interfere with interstate commerce, they brought that in any way before the manufacturers out of the State and used that as a means to restrain those men from making shipments into Philadelphia, I charge you that that would be an offense within the meaning of the law.

Now let me ask you to get your minds down to just that point. In the first place, did they have that instrument in their hands, — I do not mean by virtue of a written agreement; it is not necessary that it be by virtue of even an express oral agreement, but did they first have that power in their hands; because whether they had or had not, you may find would have a material bearing upon whether or not they used it. If they did not have it, it would bear certainly upon the question of whether or not they had actually used it.

You have heard the testimony upon that point of the witness Fischer. He was before you. You have had the opportunity to observe him. Was he straightforward in his testimony? Was

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he frank? Was he clear in his statements? Was there anything in his demeanor or in his manner of testifying or anything in this case anywhere which would induce you to entertain a doubt as to the intended truthfulness of his statement? Whether he was right or whether he was wrong in the sense of whether he was mistaken or not, — one of the questions is, did he so understand the talk? From his statements here it would seem perfectly clear that he did. Is he corroborated? He has brought here the minutes of his organization from which you would have the right to find whether he had reported such an understanding as having been reached. Of course, he may have been mistaken about it. The association had asked him to make that arrangement. They had been insisting upon it, that he should, or Local Union No. 13 should, and it had gone so far that they submitted the form of the agreement containing that provision to their counsel, and he was the one who doubted the propriety of the agreement, and advised Local Union No. 13 not to enter into it, and then it was changed, as I have indicated. So that you see if he did get the thought in his mind that the association wanted that thing done, although it was not permitted to go into the agreement, we can all understand how he fell into that error, if error it was, and, of course, no one could criticise him for having that impression.

You come to the next question as to whether or not it was used. Of course if it was used only by Local Union No. 13, or by Fischer as its representative and spokesman, although he thought he was carrying out the wishes of the Association, if he mistakenly thought so, although in perfect good faith on his part, if he was wrong in that, and the association had nothing to do with it, of course they would not be responsible for what was done. That would be perfectly clear to all of us.

So let me ask you to get your minds down to that very important feature of this case, and that brings you to the specific evidence which has been laid before you. I do not intend to take up the time in going over it. There is no occasion to do so. It has been discussed with fullness and clearness and ability by counsel on either side of this controversy. I wish merely to call your attention to the salient features of the evidence, that you can recall

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it to your minds, and from it find the facts which apply to this case.

A witness was called, Mr. Wilson, who testified that he sought to go into this business, that he encountered difficulties, that one of the difficulties which he encountered was his inability to secure supplies, raw product, the tiles which were to be set, from the manufacturers, that he took a list and he wrote to all of them, and that he received favorable replies from none, his communications were ignored by many, if not most of them, and the replies which he received were refusals, couched in more or less conciliatory language. There is a fact in the case to be found by you, and when you find things happening all one way, which ordinarily would diverge in their results; if you find a thing uniformly occurring in a certain way, where you would expect a diversity of ways; if you find a large number of men all doing one thing, where you would ordinarily expect that one would do one thing and one would do the other, the mere uniformity of the result, the mere oneness of the conclusion reached would be a circumstance which, in connection with the other evidence in the case, you could consider, and to which you might be led to attach weight. He says that he made personal application for membership, and was turned down on that proposition, and without going further into his testimony, you will recall what he said. It is very evident that he reached the conclusion, for he has so testified, that he was turned down because of the determination of this association and its members that no one outside of their own membership should participate in this trade and commerce. But that is a question in the case for you to determine. What weight are you to attach to the testimony of Mr. Wilson? He was angered, and certainly no one would blame him for being provoked and irritated if his beliefs were well-founded. Whatever effect that has in your judgment upon his testimony, you are to give to it the weight which you feel properly belongs to it, and, on the other hand, you have the thought suggested, supported by the evidence, that however this man had looked at the things to which I have just adverted, that those were not the reasons — those were not among the reasons for his inability to secure supplies, that there were other reasons which influenced these people, that he was a

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new man in the business, that his credit was unknown, that they did business, most of them, with dealers, and let me say to you that counsel is correct in saying that a manufacturer has the right to limit his trade to any class of customers whom he desires. Here is a man manufacturing anything. He may as part of his business policy decide, "I will sell only to jobbers or wholesalers. I will not sell to retailers. I will not go in competition with the people to whom I expect my manufactured goods ultimately to go", and he would have a right in good faith, and for that honest purpose, to limit his business, if he chose to do so, to that class of customers. He would have the right, if he chose, to adopt the business policy of selling only to those in the trade who were listed in accepted books of credit and not take his chances of going outside of them and passing upon the credit of individual purchasers. He would have a perfect right to limit, let me repeat, his trade and business in any such honest way as that if he chose, and if the effect of that is to cause you even to entertain a reasonable doubt of the existence of the other purpose, and the other motive for refusal to sell to this new firm (and, of course, what I have said of this one applies to all of them), and that the other purpose did not exist, or of the existence of which you have reasonable doubt, the defendants would be entitled to a finding in their favor on that point.

You have heard also the testimony of the men who were in the business, some of whom were dealers and some of whom were manufacturers. You have, for illustration, the testimony of Mr. Sweeney, and of the president, Mr. Silvers, of the company for whom he was acting. I want you to direct your attention to the testimony of Mr. Sweeney, because it is very important testimony in this case. He was acting for a concern outside of Pennsylvania, located in Trenton, New Jersey, the Trent Tile Manufacturing Company, or whatever the name of the concern is. Sweeney came to Philadelphia, for the ordinary purposes of his business, to solicit trade. The trade which he was seeking to solicit was unquestionably interstate trade, and would have resulted, if the trade was successful, in interstate commerce. You heard his testimony as to the interviews which he had with the men outside of the members of this organization with whom he was

attempting to trade. You heard his testimony as to his conversation with members of the organization. You have the fact that he reported — what report he made we are not permitted to know, because, you see, that would be a statement not under oath, but we have the statement under oath that he did report, and you have the statement from the president of the manufacturing concern that he received that report. On the strength of it he wrote the letter which has been read in your hearing to this association, and you have also the bearing of all the interviews had with different members of this organization with respect to that.

It is my duty to say to you as a matter of law, and to charge you as the law of the case, that if your judgments and convictions are that from all of that testimony these defendants or some of them were acting together, were acting in concert, and that one purpose and intent of their combination and of their concert of action was to restrain manufacturers from outside the State of Pennsylvania from selling to people within the State, or shipping their products here, that combination would be in restraint of interstate commerce, and that finding would justify a finding of conviction.

So that you can get your minds down to the crucial point in this case. As I have already said to you, we are here, hearing this case on the criminal side, and the rules of law applicable to criminal cases apply with full force here, and have equal force with that which they have in other cases tried in this court.

One of the doctrines of the law is what is called the presumption of innocence, or as it is frequently phrased, that every man is presumed to be innocent until he is proven to be guilty. It never seemed to me that either phrase was a very happy one or exactly conveyed the thought which was intended. The thought is this: these men have been charged with this offense. Charging them with the offense proves nothing, except the fact that they have been charged. It does not prove that they committed the offense, and you cannot find, — you are not permitted to find, that they committed the offense unless it is proven, and proven in the manner in which the law requires. That is, it must be proven by the testimony of witnesses who are called and sworn and whom you

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hear from the witness box and from the other evidence which is in the case. A conviction in a criminal case is a reasoned judgment. You get the facts from the testimony and the evidence. Having the facts, you apply to those facts your reason and your judgment, and those words are merely the equivalent of your common sense, and you decide whether or not those facts convince your judgment that the defendants did that with which they are charged, and if such is your conviction, if such is your judgment, then that is the proof which the law requires, and overcomes what is called the presumption of innocence.

The other thing to which I have been asked to call to your attention is familiar to all of you, and is known as the doctrine of reasonable doubt, and you will want to get clearly in your minds just what that means. It does not mean that the case must be proven to absolute certainty in the sense of being beyond the possibility of a mistake being made. You cannot have that degree of certainty in human affairs, and the law does not mean that. You will observe that it does not say "doubt." It says "reasonable doubt." Therefore, any mere speculative doubt, any whim of unbelief or disbelief, is not what the law means. It means precisely what it says, a reasonable doubt. When you take the testimony from the witnesses and get the facts from the evidence, you determine the facts. If in the determination of those facts, or if in your reasoning from those facts to a conclusion, there arises in your minds a doubt, which I have characterized as a "reasonable doubt", — if it is a reasonable doubt, it is founded upon something, and you take up that upon which it is founded, apply to it your reasoning powers, and determine whether or not it presents any real difficulty, reasonable difficulty in the way of your reaching a conclusion. If, after the exercise of all your reasoning powers, that doubt still remains in your minds, then the command of the law is that you stop. The defendants are entitled to the benefit of that kind of a doubt, because that, then, is a reasonable doubt. It is one which reasoning will not overcome or remove, and the defendants are entitled to the benefit of it. But if, after you have considered all the evidence in the case, your minds rest upon the conviction and upon the conclusion that the defendants have done the things with which they are charged,

and your conclusion and your conviction is undisturbed by the presence of the reasonable doubt to which I have adverted, then it is just as much your duty to find a verdict of guilty.

I have just one word more to say, then I will have said all to you which it occurs to me there is occasion to say.

We have here, as I have said, a large number of defendants. There is, as to some of them, so far as I can recall no direct evidence of their participation in these essential facts which bear upon the restraint of interstate commerce. They were members of the association. If your judgment leads you to the conclusion that this combination existed, then everyone who was a party to that combination is bound by the acts and bound by the statements of every other one, in the sense that they are evidence against him. So that, in that sense, you may find that there is evidence here against each and every one of these defendants. But if your minds lead you to the conclusion that there were really here two combinations, one for the very innocent and proper purpose to which I have adverted, to wit, the purpose of an association proper, and that subsequently there developed out of that, not on the part of all of the members of the association, but upon the part of some of them, this second combination, this second purpose, to do these things, which, if they were done, I have charged you would be a restraint of commerce, then you may distinguish, if you take that view of it, and your minds lead you to that conclusion, among these defendants, and find those of them who have participated, and those who have not, in the combination, which, as I have described to you, takes on this character of the forbidden and the unlawful.

Gentlemen, you may take the case and dispose of it.

The points submitted, so far as they are affirmed in the general charge, are affirmed, and so far as they are not affirmed, they are disaffirmed.

The defendants' points read as follows:

"1. The defendants are presumed to be innocent of the offenses charged in this bill of indictment.

2. The burden of proof is upon the prosecution, and to convict the defendants it must establish their guilt to the satisfaction of the jury beyond a reasonable doubt.

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3. If after consideration of all the evidence in the case, a reasonable doubt exists in the minds of the jury as to the innocence or guilt of the defendants, the defendants are entitled to its benefit and should be acquitted.

4. If the jury believe that all the substantial evidence in the case is as consistent with the innocence as with the guilt of the defendants, the defendants should be acquitted.

5. The Act of Congress of June 2, 1890, known as the 'Sherman Act', renders illegal and unlawful those combinations only the necessary effect of which is to stifle or directly and substantially to restrict free competition in interstate trade and commerce.

6. If the necessary effect of a combination to engage in or conduct interstate trade or commerce is but incidentally and indirectly to restrict competition therein, while its chief purpose and result is to foster the trade and to increase the business of those who make and operate it, it does not fall under the ban of the Sherman Act.

7. From all the evidence in the case, the jury will find that the Philadelphia Tile, Mantel and Grate Association was formed by the defendants and others in April, 1915, for lawful and legitimate purposes.

8. The agreement between the Philadelphia Tile, Mantel and Grate Association and the Tile Setters' Union, known as Local No. 13, that became effective May 1, 1916, was not a contract that directly related to or acted upon or embraced interstate trade or commerce, and the transactions and dealings of the defendants with other persons with reference to said contract and pursuant to its provisions, or with reference to the setting of tiles purchased by the defendants or other persons from manufacturers of tiles, were not transactions or dealings immediately and directly concerning or affecting interstate trade or commerce, and the evidence in relation thereto, however the jury may regard it, is not of itself sufficient to convict the defendants of being engaged in a combination or conspiracy in restraint of interstate trade or commerce.

9. There is no evidence in the case to warrant the jury in finding that the defendants or any of them engaged in a conspiracy to 'boycott' or did in fact 'boycott' manufacturers engaged in the

business of selling tile to the defendants or to any other person or persons.

10. There is no evidence in the case sufficient to warrant the jury in finding that the defendants or any of them unlawfully and knowingly engaged in a conspiracy to restrain other persons than themselves and the concerns which they represented from engaging in business as retailers of tiles in competition with the defendants, and the concerns which they represented, and from carrying on interstate trade and commerce with manufacturers of tiles.

11. The defendants should be acquitted of the charges preferred in this bill of indictment.

12. The jury must not confuse the issues in this case with those which ordinarily relate to combinations in restraint of trade which are covered by the term 'boycott.' There is no evidence in this case that the defendants, Sloan, Greenwood, Lowry, Heidmann or Phillips, did, collectively or individually, any act in reference to boycotting anybody or any firm, and to that extent the jury can find the said defendants 'Not Guilty.'

13. It was not an unlawful act by itself for the Philadelphia Tile, Mantel and Grate Association to combine its members into a particular body in an honest endeavor to procure for its members a goodly portion of the tile trade by offering exceptional terms to those who would deal with its members if those terms were reasonable, fair and just, and no action was taken to enforce those terms against those who refused to become members of the said association.

14. If the defendants, Lowry, Phillips, Heidmann, Sloan and Greenwood, though they were members of the said Philadelphia Tile, Mantel and Grate Association, did nothing to inflict any injury upon any other person or firm engaged in the same business as they, and they adopted no method as to render the business of their rivals unprofitable or interfered with, and the jury find no such action either in concert or individually on their part to have been performed by them, then your verdict as to them should be 'Not Guilty.'

15. Before the jury can convict the said Greenwood, Sloan, Heidmann, Lowry and Phillips, as among the defendants in this

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case, the Government must affirmatively show that they, either individually or jointly, did some act of intimidation or coercion to or among or with some other persons whereby those other persons were injured or damaged in their person, business or estate, and if the Government fails in that, then those defendants should be found, under the present indictment, 'Not Guilty.'

16. The defendants, Phillips, Lowry, Sloan, Heidmann and Greenwood, had a lawful right to agree among themselves to become members of the said Philadelphia Tile, Mantel and Grate Association and not to patronize any other dealer in the same business in which they were engaged who was not a member of said association, and if the said defendants used no coercive measures against such other persons or parties to enforce their agreement, then your verdict should be, as to those defendants, 'Not Guilty.'

17. Before the jury can convict the defendants, Phillips, Heidmann, Lowry, Greenwood and Sloan, of a conspiracy in the restraint of trade, under the indictment in this case, the evidence must show that those defendants knowingly engaged with other persons than themselves, or the concerns which they represented, to violate the Act of July 2, 1890, entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies', as mentioned and set forth in the indictment in this case, and if the evidence in that regard is doubtful and indefinite and uncertain, then those defendants are entitled to the benefit of that doubt and your verdict, as to them, should be 'Not Guilty.'

18. In construing the terms of an agreement, it must be considered as a whole and not as to any particular section or paragraph only, and the agreement of May 1, 1916, referred to in the indictment in this case as having been made with the members of the Ceramic, Mosaic and Encaustic Tile Layers' Union No. 13, was not in its intent an illegal paper or proposition, and if the jury believes such agreement was entered into in good faith and no coercive measures were used in connection therewith by the said defendants, Sloan, Heidmann, Greenwood, Lowry and Phillips, then those parties cannot be considered as guilty of an illegal action under the terms of that agreement and your verdict, so far as that item is concerned, should be 'Not Guilty.'

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19. In order to convict the defendants, Sloan, Heidmann, Lowry, Greenwood and Phillips, of an illegal act under the terms of the agreement with Local No. 13, above referred to, the defendants, Greenwood, Phillips, Sloan, Heidmann and Lowry, must have done some act thereunder or taken some coercive measures in connection therewith, and if they did not so act or take such measures they cannot be convicted in this case simply because they were members of the Philadelphia Tile, Mantel and Grate Association, parties to the aforesaid agreement.

20. Any action that may have been taken by the Philadelphia Tile, Mantel and Grate Association in reference to boycotting any party or firm not connected with the said association cannot be binding upon the defendants, Lowry, Heidmann, Phillips, Sloan and Greenwood, unless the evidence shows that they had knowledge of such action or agreed thereto, or had ratified such action after they had knowledge of it, or unless they had authorized other persons acting for them or they in some manner contributed to such action, and if the jury believes the evidence to show that as soon as they had heard of any such action they protested against the same and did all in their power to disapprove of such action, then they cannot be convicted, under the indictment in this case, and the mere fact that they were members of such association when such actions had taken place is not sufficient to convict them in this case and your verdict, as to those defendants, should be 'Not Guilty.'

21. Before the jury can convict the said defendants, Sloan, Lowry, Greenwood, Phillips, and Heidmann, or any of them, of the alleged conspiracy in this case, the jury must give those defendants the benefit of any doubt that may exist as to their guilt, as it is a principle of law that their intention or motive to commit the alleged conspiracy rather than their ostensible participation in the meetings of the said Philadelphia Tile, Mantel and Grate Association shall be made the test of their guilt or innocence in this case.

22. The Philadelphia Tile, Mantel and Grate Association is a corporation formed under the laws of Pennsylvania, and its action is presumed to be legal and lawful and so remains until proven otherwise. The said defendants, Heidmann, Greenwood, Phillips,

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Lowry and Sloan, had a right to become members of it and no action taken by that association if illegal or unlawful would be binding upon those defendants unless they in some way or manner took part or participated in, or assented or approved of such illegal acts or actions, and if the jury find that they did not so act, then they are not bound by the action of the said association and in that regard your verdict as to those defendants should be 'Not Guilty.'

23. It is not a test of conspiracy alleged in this case as to what the financial condition of Wilson and Gallagher was — whether fair, good or bad — but rather what the defendants honestly believed it to be. If the said defendants in good faith erroneously considered Wilson and Gallagher's financial condition unsatisfactory for their admission into the said tile association and they in good faith so acted therein, though it might be unjust to the said Wilson and Gallagher, then the defendants could not, from that standpoint, be convicted under the indictment in this case."

(Exception noted for the defendants to the refusal of the Court to affirm the defendants' points so far as they were not affirmed, by direction of the Court.)

(Exception noted for the defendants to that portion of the charge of the Court reading as follows :

"Bearing upon or somewhat upon that same point, you have heard the charges wrung upon the agreement or understanding, written or existing outside of the writing, through and by which it has been asserted before you the defendants sought to dominate and control the local business through and by means of the arrangement to which I have adverted, by which anyone other than members of their association would be prevented from engaging in the tile business, because they would at least experience difficulties, if they were not wholly prevented, from setting the tile after they had brought it here, and the query which naturally arises in your minds would be, 'Well, as that apparently only affects local business, a local monopoly, a restraint of local trade, why was that permitted to come into the case?' Of itself it has no business in the case, because it obviously does not concern interstate commerce, but it has this to do with the case, if that

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arrangement or understanding was reached, and they used it as an instrument — the defendants went across the State line and presented that to a manufacturer in another State, in the State of New Jersey, for instance, or, to be more specific, in the city of Trenton, and held up to him that if he shipped across the State line to Philadelphia, Pennsylvania, supplies or material manufactured by him, that the parties who did not wish him to do that would, in the common language of the day, boycott his manufacture by refusing themselves to buy any material or supplies from him, and it was, therefore, permitted to go in; not, let me repeat, because in itself, and by itself, it would have been a restraint of interstate commerce, but because it would have been an instrument, a means, by which a manufacturer in another State would be restrained — would be constrained from making shipments into Philadelphia, Pennsylvania, across the State line because he would be deterred by the threatened consequences, and there, I am sure, you get the distinction", by direction of the Court.)

(Exception noted for the defendants to that portion of the charge of the Court reading as follows:

"But let me repeat again, whether they had that written contract, whether they had what has been called, with some inaccuracy, a verbal contract, whether they had any contract at all, or nothing beyond an understanding — 'Now we have asked you to do this; it appears that it would be a dangerous thing for you to agree to do it, but without agreeing to it in writing, without agreeing to do it in so many words, let us have an understanding that you will do it anyhow', and if having that instrument in their hands, a means by which they could restrain, could hamper, could interfere with interstate commerce, they brought that in any way before the manufacturers out of the State and used that as a means to restrain those men from making shipments into Philadelphia, I charge you that that would be an offense within the meaning of the law", by direction of the Court.)

(Exception noted for the defendants to that portion of the charge of the Court reading as follows:

"A witness was called, Mr. Wilson, who testified that he sought to go into this business, that he encountered difficulties, that one

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of the difficulties which he encountered was his inability to secure supplies, raw products, the tiles which were to be set, from the manufacturers, that he took a list and he wrote to all of them, and that he received favorable replies from none, his communications were ignored by many, if not most of them and the replies which he received were refusals, couched in more or less conciliatory language. There is a fact in the case to be found by you, and when you find things happening all one way, which ordinarily would diverge in their results; if you find a thing uniformly occurring in a certain way, where you would expect a diversity of ways; if you find a large number of men all doing one thing, where you would ordinarily expect that one would do one thing and one would do the other, the mere uniformity of the result, the mere oneness of the conclusion reached would be a circumstance which, in connection with the other evidence in the case, you would consider, and to which you might be led to attach weight", by direction of the Court.)

(Exceptions noted for the defendants' to that portion of the charge of the Court reading as follows:

"Sweeney came to Philadelphia, for the ordinary purposes of his business, to solicit the trade. The trade which he was seeking to solicit was unquestionably interstate trade, and would have resulted, if the trade was successful, in interstate commerce. You heard his testimony as to the interviews which he had with the men outside of the members of this organization with whom he was attempting to trade. You heard his testimony as to his conversation with members of the organization. You have the fact that he reported — what report he made we are not permitted to know, because, you see, that would be a statement not under oath, but we have the statement under oath that he did report, and you have the statement from the president of the manufacturing concern that he received the report. On the strength of it he wrote the letter which has been read in your hearing to this association, and you have also the bearing of all the interviews had with different members of this organization with respect to that.

"It is my duty to say to you as a matter of law, and to charge

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you as the law of the case, that if your judgments and convictions are that from all of that testimony these defendants or some of them were acting together, were acting in concert, and that one purpose and intent of their combination and of their concert of action was to restrain manufacturers from outside the State of Pennsylvania from selling to people within the State, or shipping their products here, that combination would be in restraint of interstate commerce, and that finding would justify a finding of conviction", by direction of the Court.)

(Exception noted for the defendants to that portion of the charge of the Court reading as follows:

"If in the determination of those facts, or if in your reasoning from those facts to a conclusion, there arises in your minds a doubt, which I have characterized as a 'reasonable doubt' — if it is a reasonable doubt, it is founded upon something, and you take up that upon which it is founded, apply to it your reasoning powers, and determine whether or not it presents any real difficulty, reasonable difficulty in the way of your reaching a conclusion. If, after the exercise of all your reasoning powers, that doubt still remains in your minds, then the command of the law is that you stop. The defendants are entitled to the benefit of that kind of a doubt, because that, then, is a reasonable doubt. It is one which reasoning will not overcome or remove, and the defendants are entitled to the benefit of it. But if, after you have considered all the evidence in the case, your minds rest upon the conviction and upon the conclusion that the defendants have done the things with which they are charged, and your conclusion and your conviction is undisturbed by the presence of the reasonable doubt to which I have adverted, then it is just as much your duty to find a verdict of guilty", by direction of the Court.)

(Exception noted for the defendants to that portion of the charge of the Court reading as follows:

"We have here, as I have said, a large number of defendants. There is, as to some of them, so far as I can recall, no direct evidence of their participation in these essential facts which bear upon the restraint of interstate commerce. They were members of the association. If your judgment leads you to the conclusion that

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this combination existed, then everyone who was a party to that combination is bound by the acts and bound by the statements of every other one, in the sense that they are evidence against him. So that, in that sense, you may find that there is evidence here against each and every one of these defendants. But if your minds lead you to the conclusion that there were really here two combinations, one for the very innocent and proper purpose to which I have adverted, to wit, the purpose of an association proper, and that subsequently there developed out of that, not on the part of all of the members of the association, but upon the part of some of them, this second combination, this second purpose, to do these things, which, if they were done, I have charged you would be a restraint of commerce, then you may distinguish, if you take that view of it, and your minds lead you to that conclusion, among these defendants, and find those of them who have participated, and those who have not, in the combination, which, as I have described to you, takes on this character of the forbidden and the unlawful.

"Gentlemen, you may take the case and dispose of it", by direction of the Court.)

Counsel for the defendants requested the learned Judge to direct the stenographer to reduce the testimony and charge of the Court to typewriting, and file the same of record in the cause, which request was granted, and the stenographer was so directed.

The jury rendered a verdict of "Guilty" as to all of the defendants.

The counsel for the said defendants did then and there tender this bill of exceptions to the rulings, charge and opinion of the said Court, and requested that the seal of the Judge aforesaid be put to the same, according to the form of statute in such cases made and provided. And thereupon the said Judge did, at the request of counsel for the said defendants, put his seal to this bill of exceptions, pursuant to the aforesaid statute in such case made and provided, this tenth day of July, 1918.

O. B. DICKINSON, (Seal)
Judge.

GROUP II

VIOLATIONS OF INTERSTATE COMMERCE ACT

- No. 20. Indictment for Violation Section 10 of the Interstate Commerce Act.
- No. 21. Order for Summons.
- No. 22. Arraignment and Plea of Not Guilty.
- No. 23. Order Denying Motion to Withdraw Plea of Not Guilty, and for Leave to File Demurser.
- No. 24. Order Placing Cause for Trial.
- No. 25. Joinder in Issue.
- No. 26. Impaneling of Jury.
- No. 27. Order of Nolle Prosequi as to Certain Defendants.
- No. 28. Order of Adjournment.
- No. 29. Order Denying Motion to Dismiss at Close of All the Evidence.
- No. 30. Verdict and Entry of Motion for New Trial.
- No. 31. Order Setting Down Motion for New Trial for Argument.
- No. 32. Order Taking Cause under Advisement.
- No. 33. Judgment and Sentence.
- No. 34. Order Overruling Motion for New Trial and in Arrest of Judgment.
- No. 35. Charge of the Court.
- No. 36. Petition for Writ of Error.
- No. 37. Assignment of Errors.
- No. 38. Order for Writ of Error and Supersedeas.
- No. 39. Supersedeas Bond.
- No. 40. Writ of Error.

FORM NO. 20

Indictment for Violation Section 10 of Interstate Commerce Act.
Elgin, J. & E. Ry. Co. v. United States, 253 Fed. 907 (C. C. A.
7th Cir.).

UNITED STATES OF AMERICA

Northern District of Illinois

Eastern Division

In the District Court thereof, } ss.
December Term, A. D. 1910. }

The grand jurors for the United States of America inquiring for the Eastern Division of the Northern District of Illinois,

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upon their oath present that before and on the first day of January in the year of our Lord nineteen hundred and nine, and throughout the period of time from that day until and on the first day of February in the year of our Lord nineteen hundred and ten, the Carrier-Low Company was a corporation organized and existing under and by virtue of the laws of the State of Illinois, and was engaged at Joliet, Illinois, in the manufacture, sale and shipment in interstate commerce, of paper, wood pulp and strawboard boxes; and that within the period of time aforesaid, the Elgin, Joliet and Eastern Railway Company was a corporation organized and existing under and by virtue of the laws of the State of Illinois, and was a common carrier engaged in the transportation of property by railroad, over its railway route and line of transportation from Joliet, in the State of Illinois, to Indianapolis, in the State of Indiana, under a common arrangement with a certain other corporation common carrier, to-wit, the Chicago, Indianapolis and Louisville Railway Company, for a continuous carriage and shipment of property in interstate commerce, from Joliet aforesaid to Indianapolis aforesaid, over the connecting railroads of the said corporation common carriers, that is to say, over the railroad of the said Elgin, Joliet and Eastern Railway Company from Joliet aforesaid in the said division and district, to Dyer in the State of Indiana, and over the railroad of the said Chicago, Indianapolis and Louisville Railway Company from Dyer aforesaid to Indianapolis aforesaid; that so the said Elgin, Joliet and Eastern Railway Company and said Chicago, Indianapolis and Louisville Railway Company, during the said period, were corporation common carriers subject to the provisions of the Act of Congress approved February 4, 1887, entitled "An Act to Regulate Commerce", and also to the acts of Congress amendatory of the said act; that within the said period of time, to-wit, on the fourth day of December, in the year of our Lord nineteen hundred and nine, the rate and charge for the transportation in the interstate commerce aforesaid, of certain kinds of property, to-wit, paper, wood pulp and strawboard boxes, knocked down, flat, in carload lots, from Joliet aforesaid to Indianapolis aforesaid, which was then established and then in force upon the said railway route and line of transportation, was nine cents for each one hundred pounds thereof.

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dianapolis aforesaid; that so the said Elgin, Joliet and Eastern Railway Company and said Chicago, Indianapolis and Louisville Railway Company, during the said period, were corporation common carriers subject to the provisions of the Act of Congress approved February 4, 1887, entitled "An Act to Regulate Commerce", and also to the acts of Congress amendatory of the said act; that within the said period of time, to-wit, on the fourth day of December, in the year of our Lord nineteen hundred and nine, the rate and charge for the transportation in the interstate commerce aforesaid, of certain kinds of property, to-wit, paper, wood pulp and strawboard boxes, knocked down, flat, in carload lots, from Joliet aforesaid to Indianapolis aforesaid, which was then established and then in force upon the said railway route and line of transportation, was nine cents for each one hundred pounds thereof.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that within the period of time aforesaid, to-wit, on the fourth day of December, in the year of our Lord nineteen hundred and nine, and while the said rate and charge was then established and then in force on the railway route and line of transportation as aforesaid, the said Carrier-Low Company did deliver to the said Elgin, Joliet and Eastern Railway Company for transportation, in interstate commerce, to-wit, from Joliet aforesaid, through the said Eastern Division of the said Northern District of Illinois, to Indianapolis aforesaid, over the said railway route and line of transportation, a large quantity, to-wit, 56,600 pounds of paper, wood pulp and strawboard boxes, packed in 3996 bundles; which said property was transported by the Elgin, Joliet and Eastern Railway Company aforesaid, and the said Chicago, Indianapolis and Louisville Railway Company, in a car on the Chicago, Rock Island and Mexico Railway Company, numbered 350,154, from Joliet, Illinois, aforesaid, to Indianapolis, Indiana, aforesaid, over the railway route and line of transportation aforesaid, and at Indianapolis aforesaid, delivered to the National Starch Company, pursuant to request of said Carrier-Low Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said Elgin, Joliet and Eastern Railway Com-

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pany unlawfully did knowingly and willfully falsely classify said paper, wood pulp and strawboard boxes as strawboard, whereby, and by which device, said property was transported in interstate commerce as aforesaid from Joliet aforesaid to Indianapolis aforesaid, over the said railway route and line of transportation, at a total rate and charge of seven and one half cents for each one hundred pounds thereof; instead of nine cents per hundred pounds, the regular rate and charge then established and then in force on the said railway route and line of transportation, for the transportation of the said paper, wood pulp and strawboard boxes, between Joliet aforesaid and Indianapolis aforesaid.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said Elgin, Joliet and Eastern Railway Company, a corporation common carrier as aforesaid, on the fourth day of December, in the year of our Lord nineteen hundred and nine, at Joliet aforesaid, within the said Eastern Division of the said Northern District of Illinois, in manner and form aforesaid, did unlawfully by means of false classification as aforesaid, knowingly and willfully assist said Carrier-Low Company, a corporation as aforesaid, to obtain transportation for said property, in the interstate commerce aforesaid, between Joliet, Illinois, aforesaid, and Indianapolis, Indiana, aforesaid, at less than the regular rates then established and then in force on the railway route and line of transportation aforesaid; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

3. And the grand jurors aforesaid, upon their oath aforesaid, do further present that before and on the first day of January in the year of our Lord nineteen hundred and nine, and throughout the period of time from that day until and on the first day of February in the year of our Lord nineteen hundred and ten, the Carrier-Low Company was a corporation organized and existing under and by virtue of the laws of the State of Illinois, and was engaged at Joliet, Illinois, in the manufacture, sale and shipment in interstate commerce, of paper, wood pulp and strawboard boxes; and that within the period of time aforesaid, the Elgin, Joliet and Eastern Railway Company was a corporation organized

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and existing under and by virtue of the laws of the State of Illinois, and was a common carrier engaged in the transportation of property by railroad, over its railway route and line of transportation from Joliet, in the State of Illinois, to Indianapolis, in the State of Indiana, under a common arrangement with a certain other corporation common carrier, to-wit, the Chicago, Indianapolis and Louisville Railway Company, for a continuous carriage and shipment of property in interstate commerce, from Joliet aforesaid to Indianapolis aforesaid, over the connecting railroads of the said corporation common carriers, that is to say, over the railroad of the said Elgin, Joliet and Eastern Railway Company from Joliet aforesaid in the said division and district, to Dyer, in the State of Indiana, and over the railroad of the said Chicago, Indianapolis and Louisville Railway Company from Dyer aforesaid to Indianapolis aforesaid; that so the said Elgin, Joliet and Eastern Railway Company and the said Chicago, Indianapolis and Louisville Railway Company, during the same period, were corporation common carriers subject to the provisions of the Act of Congress approved February 4, 1887, entitled "An Act to Regulate Commerce", and also to the acts of Congress amendatory of the said act; that within the said period of time, to-wit, on the fourth day of December, in the year of our Lord nineteen hundred and nine, the rate and charge for the transportation in the interstate commerce aforesaid, of certain kinds of property, to-wit, paper, wood pulp and strawboard boxes, knocked down, flat, in carload lots, from Joliet aforesaid to Indianapolis aforesaid, which was then established and then in force upon the said railway route and line of transportation, was nine cents for each one hundred pounds thereof.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that within the period of time aforesaid, to-wit, on the fourth day of December, in the year of our Lord nineteen hundred and nine, and while the said rate and charge was then established and then in force on the railway route and line of transportation as aforesaid, the said Carrier-Low did deliver to the said Elgin, Joliet and Eastern Railway Company for transportation, in interstate commerce, to-wit, from Joliet aforesaid, through the said Eastern Division of

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the said Northern District of Illinois, to Indianapolis aforesaid, over the said Railway route and line of transportation, a large quantity, to-wit, 56,600 pounds of paper, wood pulp and strawboard boxes, packed in 3996 bundles; which said property was transported by the Elgin, Joliet and Eastern Railway Company aforesaid, and the said Chicago, Indianapolis and Louisville Railway Company, in a car of the Chicago, Rock Island and Mexico Railway Company, numbered 350,154, from Joliet, Illinois, aforesaid, to Indianapolis, Indiana, aforesaid, over the railway route and line of transportation aforesaid, and at Indianapolis aforesaid, delivered to the National Starch Company, pursuant to request of said Carrier-Low Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said Elgin, Joliet and Eastern Railway Company unlawfully did knowingly and willfully falsely bill said paper, wood pulp and strawboard boxes as strawboard, whereby, and by which device, said property was transported in interstate commerce as aforesaid from Joliet aforesaid to Indianapolis aforesaid, over the said railway route and line of transportation, at a total rate and charge of seven and one half cents for each one hundred pounds thereof; instead of nine cents per hundred pounds, the regular rate and charge then established and then in force on the said railway route and line of transportation, for the transportation of the said paper, wood pulp and strawboard boxes, between Joliet aforesaid and Indianapolis aforesaid.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said Elgin, Joliet and Eastern Railway Company, a corporation common carrier as aforesaid, on the fourth day of December, in the year of our Lord nineteen hundred and nine, at Joliet aforesaid, within the said Eastern Division of the said Northern District of Illinois, in manner and form aforesaid, did unlawfully by means of false billing as aforesaid, knowingly and willfully suffer and permit said Carrier-Low Company, a corporation as aforesaid, to obtain transportation for said property, in the interstate commerce aforesaid, between Joliet, Illinois, aforesaid, and Indianapolis, Indiana, aforesaid, at less than the regular rates then established and then in force on the railway

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route and line of transportation aforesaid; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

4. And the grand jurors aforesaid, upon their oath aforesaid, do further present that before and on the first day of January in the year of our Lord nineteen hundred and nine, and throughout the period of time from that day until and on the first day of February in the year of our Lord nineteen hundred and ten, the Carrier-Low Company was a corporation organized and existing under and by virtue of the laws of the State of Illinois, and was engaged at Joliet, Illinois, in the manufacture, sale and shipment in interstate commerce, of paper, wood pulp and strawboard boxes; and that within the period of time aforesaid, the Elgin, Joliet and Eastern Railway Company was a corporation organized and existing under and by virtue of the laws of the State of Illinois, and was a common carrier engaged in the transportation of property by railroad, over its railway route and line of transportation from Joliet, in the State of Illinois, to Indianapolis, in the State of Indiana, under a common arrangement with a certain other corporation common carrier, to-wit, the Chicago, Indianapolis and Louisville Railway Company, for a continuous carriage and shipment of property in interstate commerce, from Joliet aforesaid to Indianapolis aforesaid, over the connecting railroads of the said corporation common carriers, that is to say, over the railroad of the said Elgin, Joliet and Eastern Railway Company from Joliet aforesaid in the said division and district, to Dyer, in the State of Indiana, and over the railroad of the said Chicago, Indianapolis and Louisville Railway Company from Dyer aforesaid to Indianapolis aforesaid; that so the said Elgin, Joliet and Eastern Railway Company and the said Chicago, Indianapolis and Louisville Railway Company, during the said period, were corporation common carriers subject to the provisions of the Act of Congress approved February 4, 1887, entitled "An Act to Regulate Commerce", and also to the acts of Congress amendatory of the said act; that within the said period of time, to-wit, on the fourth day of December, in the year of our Lord nineteen hundred and nine, the rate and charge for the transportation in the interstate commerce aforesaid, of certain kinds of

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property, to-wit, paper, wood pulp and strawboard boxes, knocked down, flat, in carload lots, from Joliet aforesaid to Indianapolis aforesaid, which was then established and then in force upon the said railway route and line of transportation, was nine cents for each one hundred pounds thereof.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that within the period of time aforesaid, to-wit, on the fourth day of December, in the year of our Lord nineteen hundred and nine, and while the said rate and charge was then established and then in force on the railway route and line of transportation as aforesaid, the said Carrier-Low Company did deliver to the said Elgin, Joliet and Eastern Railway Company for transportation, in interstate commerce, to-wit, from Joliet aforesaid, through the said Eastern Division of the said Northern District of Illinois, to Indianapolis aforesaid, over the said Railway route and line of transportation, a large quantity, to-wit, 56,600 pounds of paper, wood pulp and strawboard boxes, packed in 3996 bundles; which said property was transported by the Elgin, Joliet and Eastern Railway Company aforesaid, and the said Chicago, Indianapolis and Louisville Railway Company, in a car of the Chicago, Rock Island and Mexico Railway Company, numbered 350,154, from Joliet, Illinois, aforesaid, to Indianapolis, Indiana, aforesaid, over the railway route and line of transportation aforesaid, and at Indianapolis aforesaid, delivered to the National Starch Company, pursuant to request of said Carrier-Low Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said Elgin, Joliet and Eastern Railway Company unlawfully did knowingly and willfully falsely classify said paper, wood pulp and strawboard boxes as strawboard, whereby, and by which device, said property was transported in interstate commerce as aforesaid from Joliet aforesaid to Indianapolis aforesaid, over the said railway route and line of transportation, at a total rate and charge of seven and one half cents for each one hundred pounds thereof; instead of nine cents per hundred pounds, the regular rate and charge then established and then in force on the said railway route and line of transportation, for the transportation of the said paper, wood pulp

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and strawboard boxes, between Joliet aforesaid and Indianapolis aforesaid.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said Elgin, Joliet and Eastern Railway Company, a corporation common carrier as aforesaid, on the fourth day of December, in the year of our Lord nineteen hundred and nine, at Joliet aforesaid, within the said Eastern Division of the said Northern District of Illinois, in manner and form aforesaid, did unlawfully by means of false classification as aforesaid, knowingly and willfully suffer and permit said Carrier-Low Company, a corporation as aforesaid, to obtain transportation for said property, in the interstate commerce aforesaid, between Joliet, Illinois, aforesaid, and Indianapolis, Indiana, aforesaid, at less than the regular rates then established and then in force on the railway route and line of transportation aforesaid; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

5. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Elgin, Joliet & Eastern Railway Company, corporation common carrier as in the first count of this indictment set forth and within the period of time specified therein, to-wit, on the seventh day of October, in the year of our Lord nineteen hundred and nine, was engaged in the transportation of property by railroad over its railway route and line of transportation from Joliet, in the State of Illinois, to Akron, in the State of Ohio, under a common arrangement with a certain other corporation common carrier subject to the provisions of the Act of Congress approved February 4, 1887, entitled, "An Act to Regulate Commerce" and acts of Congress amendatory thereof, to-wit, the Baltimore and Ohio Railroad Company, for a continuous carriage and shipment of property in interstate commerce from Joliet aforesaid to Akron aforesaid, over the connecting railroads of the said corporation common carriers, that is to say, over the railroad of the said Elgin, Joliet and Eastern Railway Company from Joliet aforesaid, in the said Eastern Division of the said Northern District of Illinois, to McCool in the State of Indiana, and over the railroad of the said Baltimore and Ohio

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Railroad Company from McCool aforesaid to Akron aforesaid; that within the said period of time, to-wit, on the seventh day of October, in the year of our Lord nineteen hundred and nine, the rate and charge for the transportation in the interstate commerce aforesaid, of certain kinds of property, to-wit, paper, wood pulp and strawboard boxes knocked down flat, in carload lots from Joliet aforesaid to Akron aforesaid, which was then established and then in force upon the said railway route and line of transportation was fifteen cents for each one hundred pounds thereof. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that within the period of time aforesaid, to-wit, on the seventh day of October, in the year of our Lord nineteen hundred and nine, and while the said rate and charge was then established and then in force on the railway route and line of transportation as aforesaid, the said Carrier-Low Company did deliver to the said Elgin, Joliet and Eastern Railway Company for transportation in interstate commerce, to-wit, from Joliet aforesaid, through the said Eastern Division of the said Northern District of Illinois, to Akron aforesaid, over the said railway route and line of transportation, a large quantity, to-wit, 35,650 pounds of paper, wood pulp and strawboard boxes, knocked down flat, packed in 1409 bundles, which said property was transported by the said Elgin, Joliet and Eastern Railway Company and the said Baltimore and Ohio Railroad Company in a car of the Southern Railway Company, numbered 15,556, from Joliet aforesaid to Akron aforesaid, over the said railway route and line of transportation, and at Akron aforesaid, delivered to the Great Western Cereal Company, pursuant to request of said Carrier-Low Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Elgin, Joliet & Eastern Railway Company unlawfully did knowingly and willfully falsely bill said paper, wood pulp and strawboard boxes as strawboard, whereby, and by which device, said property was transported in interstate commerce as aforesaid from Joliet aforesaid to Akron aforesaid, over the said railway route and line of transportation, at a total rate and charge of ten cents for each one hundred pounds thereof, instead of fifteen cents per one hundred pounds, the regular rate

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and charge then established and then in force on the said railway route and line of transportation for the transportation of the said paper, wood pulp and strawboard boxes, between Joliet aforesaid and Akron aforesaid.

And so the grand jurors aforesaid, upon their oath aforesaid, to say, that the said Elgin, Joliet and Eastern Railway Company, a corporation common carrier as aforesaid, on the seventh day of October, in the year of our Lord nineteen hundred and nine, at Joliet aforesaid, within the said Eastern Division of the said Northern District of Illinois, in manner and form aforesaid, did unlawfully by means of false billing as aforesaid, knowingly and willfully assist said Carrier-Low Company, a corporation as aforesaid, to obtain transportation for said property in the interstate commerce aforesaid, between Joliet, Illinois, aforesaid, and Akron, Ohio, aforesaid, at less than the regular rates then established and then in force on the railway route and line of transportation aforesaid, against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

6. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Elgin, Joliet & Eastern Railway Company, corporation common carrier as in the first count of this indictment set forth and within the period of time specified therein, to-wit, on the seventh day of October, in the year of our Lord nineteen hundred and nine, was engaged in the transportation of property by railroad over its railway route and line of transportation from Joliet, in the State of Illinois, to Akron, in the State of Ohio, under a common arrangement with a certain other corporation common carrier subject to the provisions of the Act of Congress approved February 4, 1887, entitled, "An Act to Regulate Commerce" and acts of Congress amendatory thereof, to-wit, the Baltimore and Ohio Railroad Company, for a continuous carriage and shipment of property in interstate commerce from Joliet aforesaid to Akron aforesaid, over the connecting railroads of the said corporation common carriers, that is to say, over the railroad of the said Elgin, Joliet and Eastern Railway Company from Joliet aforesaid, in the said Eastern Division of the said Northern District of Illi-

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nois, to McCool in the State of Indiana, and over the railroad of the said Baltimore and Ohio Railroad Company from McCool aforesaid to Akron aforesaid; that within the said period of time, to-wit, on the seventh day of October, in the year of our Lord nineteen hundred and nine, the rate and charge for the transportation in the interstate commerce aforesaid, of certain kinds of property, to-wit, paper, wood pulp and strawboard boxes knocked down flat, in carload lots from Joliet aforesaid to Akron aforesaid, which was then established and then in force upon the said railway route and line of transportation was fifteen cents for each one hundred pounds thereof. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that within the period of time aforesaid, to-wit, on the seventh day of October, in the year of our Lord nineteen hundred and nine, and while the said rate and charge was then established and then in force on the railway route and line of transportation as aforesaid, the said Carrier-Low Company did deliver to the said Elgin, Joliet and Eastern Railway Company for transportation in interstate commerce, to-wit, from Joliet aforesaid, through the said Eastern Division of the said Northern District of Illinois, to Akron aforesaid, over the said railway route and line of transportation, a large quantity, to-wit, 35,650 pounds of paper, wood pulp and strawboard boxes, knocked down flat, packed in 1409 bundles, which said property was transported by the said Elgin, Joliet and Eastern Railway Company and the said Baltimore and Ohio Railroad Company in a car of the Southern Railway Company, numbered 15,556, from Joliet aforesaid to Akron aforesaid, over the said railway route and line of transportation, and at Akron aforesaid, delivered to the Great Western Cereal Company, pursuant to request of said Carrier-Low Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Elgin, Joliet & Eastern Railway Company unlawfully did knowingly and willfully falsely classify said paper, wood pulp and strawboard boxes as strawboard, whereby, and by which device, said property was transported in interstate commerce as aforesaid from Joliet aforesaid to Akron aforesaid, over the said railway route and line of transportation, at a total rate and charge of ten cents

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for each one hundred pounds thereof, instead of fifteen cents per one hundred pounds, the regular rate and charge then established and then in force on the said railway route and line of transportation for the transportation of the said paper, wood pulp and strawboard boxes, between Joliet aforesaid and Akron aforesaid.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said Elgin, Joliet and Eastern Railway Company, corporation common carrier as aforesaid, on the seventh day of October, in the year of our Lord nineteen hundred and nine, at Joliet aforesaid, within the said Eastern Division of the said Northern District of Illinois, in manner and form aforesaid, did unlawfully by means of false classification as aforesaid, knowingly and willfully assist said Carrier-Low Company, a corporation as aforesaid, to obtain transportation for said property in the interstate commerce aforesaid, between Joliet, Illinois, aforesaid, and Akron, Ohio, aforesaid, at less than the regular rates then established and then in force on the railway route and line of transportation aforesaid, against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

7. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Elgin, Joliet & Eastern Railway Company, corporation common carrier as in the first count of this indictment set forth and within the period of time specified therein, to-wit, on the seventh day of October, in the year of our Lord nineteen hundred and nine, was engaged in the transportation of property by railroad over its railway route and line of transportation from Joliet, in the State of Illinois, to Akron, in the State of Ohio, under a common arrangement with a certain other corporation common carrier subject to the provisions of the Act of Congress approved February 4, 1887, entitled, "An Act to Regulate Commerce" and acts of Congress amendatory thereof, to-wit, the Baltimore and Ohio Railroad Company, for a continuous carriage and shipment of property in interstate commerce from Joliet aforesaid to Akron aforesaid, over the connecting railroads of the said corporation common carriers, that is to say, over the railroad of the said Elgin, Joliet and Eastern Railway

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Company from Joliet aforesaid, in the said Eastern Division of the said Northern District of Illinois, to McCool in the State of Indiana, and over the railroad of the said Baltimore and Ohio Railroad Company from McCool aforesaid to Akron aforesaid; that within the said period of time, to-wit, on the seventh day of October, in the year of our Lord nineteen hundred and nine, the rate and charge for the transportation in the interstate commerce aforesaid, of certain kinds of property, to-wit, paper, wood pulp and strawboard boxes knocked down flat, in carload lots from Joliet aforesaid to Akron aforesaid, which was then established and then in force upon the said railway route and line of transportation was fifteen cents for each one hundred pounds thereof. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that within the period of time aforesaid, to-wit, on the seventh day of October, in the year of our Lord nineteen hundred and nine, and while the said rate and charge was then established and then in force on the railway route and line of transportation as aforesaid, the said Carrier-Low Company did deliver to the said Elgin, Joliet and Eastern Railway Company for transportation in interstate commerce, to-wit, from Joliet aforesaid, through the said Eastern Division of the said Northern District of Illinois, to Akron aforesaid, over the said railway route and line of transportation, a large quantity, to-wit, 35,650 pounds of paper, wood pulp and strawboard boxes, knocked down flat, packed in 1409 bundles, which said property was transported by the said Elgin, Joliet and Eastern Railway Company and the said Baltimore and Ohio Railroad Company in a car of the Southern Railway Company, numbered 15,556, from Joliet aforesaid, to Akron aforesaid, over the said railway route and line of transportation, and at Akron aforesaid, delivered to the Great Western Cereal Company, pursuant to request of said Carrier-Low Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Elgin, Joliet & Eastern Railway Company unlawfully did knowingly and willfully falsely bill said paper, wood pulp and strawboard boxes as strawboard whereby, and by which device, said property was transported in interstate commerce as aforesaid from Joliet aforesaid to

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Akron aforesaid, over the said railway route and line of transportation, at a total rate and charge of ten cents for each one hundred pounds thereof, instead of fifteen cents per one hundred pounds, the regular rate and charge then established and then in force on the said railway route and line of transportation for the transportation of the said paper, wood pulp and strawboard boxes, between Joliet aforesaid and Akron aforesaid.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said Elgin, Joliet and Eastern Railway Company, a corporation common carrier as aforesaid, on the seventh day of October, in the year of our Lord nineteen hundred and nine, at Joliet aforesaid, within the said Eastern Division of the said Northern District of Illinois, in manner and form aforesaid, did unlawfully by means of false billing as aforesaid, knowingly and willfully suffer and permit said Carrier-Low Company, corporation as aforesaid, to obtain transportation for said property in the interstate commerce aforesaid, between Joliet, Illinois, aforesaid, and Akron, Ohio, aforesaid, at less than the regular rates then established and then in force on the railway route and line of transportation aforesaid, against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

8. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Elgin, Joliet & Eastern Railway Company, corporation common carrier as in the first count of this indictment set forth and within the period of time specified therein, to-wit, on the seventh day of October, in the year of our Lord nineteen hundred and nine, was engaged in the transportation of property by railroad over its railway route and line of transportation from Joliet, in the State of Illinois, to Akron, in the State of Ohio, under a common arrangement with a certain other corporation common carrier subject to the provisions of the Act of Congress approved February 4, 1887, entitled, "An Act to Regulate Commerce" and acts of Congress amendatory thereof, to-wit, the Baltimore and Ohio Railroad Company, for a continuous carriage and shipment of property in interstate commerce from Joliet aforesaid to Akron aforesaid, over the connecting

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railroads of the said corporation common carriers, that is to say, over the railroad of the said Elgin, Joliet and Eastern Railway Company from Joliet aforesaid, in the said Eastern Division of the said Northern District of Illinois, to McCool in the State of Indiana, and over the railroad of the said Baltimore and Ohio Railroad Company from McCool aforesaid to Akron aforesaid; that within the said period of time, to-wit, on the seventh day of October, in the year of our Lord nineteen hundred and nine, the rate and charge for the transportation in the interstate commerce aforesaid, of certain kinds of property, to-wit, paper, wood pulp and strawboard boxes knocked down flat, in carload lots from Joliet aforesaid to Akron aforesaid, which was then established and then in force upon the said railway route and line of transportation was fifteen cents for each one hundred pounds thereof. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that within the period of time aforesaid, to-wit, on the seventh day of October, in the year of our Lord nineteen hundred and nine, and while the said rate and charge was then established and then in force on the railway route and line of transportation as aforesaid, the said Carrier-Low Company did deliver to the said Elgin, Joliet and Eastern Railway Company for transportation in interstate commerce, to-wit, from Joliet aforesaid, through the said Eastern Division of the said Northern District of Illinois, to Akron aforesaid, over the said railway route and line of transportation, a large quantity, to-wit, 35,650 pounds of paper, wood pulp and strawboard boxes, knocked down flat, packed in 1409 bundles, which said property was transported by the said Elgin, Joliet and Eastern Railway Company and the said Baltimore and Ohio Railroad Company in a car of the Southern Railway Company, numbered 15,556, from Joliet aforesaid to Akron aforesaid, over the said railway route and line of transportation, and at Akron aforesaid, delivered to the Great Western Cereal Company, pursuant to request of said Carrier-Low Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Elgin, Joliet & Eastern Railway Company unlawfully did knowingly and willfully falsely classify said paper, wood pulp and strawboard boxes as strawboard,

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whereby, and by which device, said property was transported in interstate commerce as aforesaid from Joliet aforesaid to Akron aforesaid, over the said railway route and line of transportation, at a total rate and charge of ten cents for each one hundred pounds thereof, instead of fifteen cents per one hundred pounds, the regular rate and charge then established and then in force on the said railway route and line of transportation for the transportation of the said paper, wood pulp and strawboard boxes, between Joliet aforesaid and Akron aforesaid.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said Elgin, Joliet and Eastern Railway Company, a corporation common carrier as aforesaid, on the seventh day of October, in the year of our Lord nineteen hundred and nine, at Joliet aforesaid, within the said Eastern Division of the said Northern District of Illinois, in manner and form aforesaid, did unlawfully by means of false classification as aforesaid, knowingly and willfully suffer and permit said Carrier-Low Company, a corporation as aforesaid, to obtain transportation for said property in the interstate commerce aforesaid, between Joliet, Illinois, aforesaid, and Akron, Ohio, aforesaid, at less than the regular rates then established and then in force on the railway route and line of transportation aforesaid, against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

9. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that the said Elgin, Joliet and Eastern Railway Company, corporation common carrier as in the first count of this indictment set forth and within the period of time specified therein, to-wit, on the third day of February, in the year of our Lord nineteen hundred and nine, was engaged in the transportation of property by railroad over its railway route and line of transportation from Joliet, in the State of Illinois, to Edinburg, in the State of Indiana, under a common arrangement with a certain other corporation common carrier subject to the provisions of the Act of Congress approved February 4, 1887, entitled, "An Act to Regulate Commerce" and acts of Congress amendatory thereof, to-wit, the Pittsburg, Cincinnati, Chicago and St. Louis Railway Company, for a continuous carriage and shipment of

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property in interstate commerce from Joliet aforesaid to Edinburg aforesaid, over the connecting railroads of the said corporation common carriers, that is to say, over the railroad of the said Elgin, Joliet and Eastern Railway Company from Joliet aforesaid, in the said Eastern Division of the said Northern District of Illinois, to Hartsdale, in the State of Indiana, and over the railroad of the said Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company from Hartsdale aforesaid, to Edinburg aforesaid; that within the said period of time, to-wit, on the third day of February, in the year of our Lord nineteen hundred and nine, the rate and charge for the transportation in the interstate commerce aforesaid, of certain kinds of property, to-wit, paper, wood pulp and strawboard boxes, knocked down flat, in carload lots, from Joliet aforesaid, to Edinburg aforesaid, which was then established and then in force upon the said railway route and line of transportation, was thirteen cents for each one hundred pounds thereof.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that within the period of time aforesaid, to-wit, on the third day of February, in the year of our Lord nineteen hundred and nine, and while the said rate and charge was then established and then in force on the railway route and line of transportation, as aforesaid, the said Carrier-Low Company did deliver to the said Elgin, Joliet and Eastern Railway Company for transportation in interstate commerce, to-wit, from Joliet aforesaid, through the said Eastern Division of the said Northern District of Illinois, to Edinburg aforesaid, over the said railway route and line of transportation, a large quantity, to-wit 35,100 pounds of paper, wood pulp and strawboard boxes, knocked down flat, packed in 5981 bundles, which said property was transported by the said Elgin, Joliet and Eastern Railway Company and the said Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company in a car of the Chesapeake and Ohio Railway Company, numbered 2474, from Joliet aforesaid, to Edinburg aforesaid, over the said railway route and line of transportation, and at Edinburg aforesaid, delivered to the Union Starch and Refining Company, pursuant to request of said Carrier-Low Company.

And the grand jurors aforesaid, upon their oath aforesaid,

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do further present, that the said Elgin, Joliet and Eastern Railway Company unlawfully did knowingly and willfully, falsely bill said paper, wood pulp and strawboard boxes as strawboard, whereby, and by which device, said property was transported in interstate commerce as aforesaid from Joliet aforesaid, to Edinburg aforesaid over the said railway route and line of transportation, at a total rate and charge of ten and one-half cents for each hundred pounds thereof, instead of thirteen cents per one hundred pounds, the regular rate and charge then established and then in force on the said railway route and line of transportation for the transportation of the said paper, wood pulp and strawboard boxes, between Joliet aforesaid, and Edinburg aforesaid.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said Elgin, Joliet and Eastern Railway Company, corporation common carrier as aforesaid, on the third day of February, in the year of our Lord nineteen hundred and nine, at Joliet aforesaid, within the said Eastern Division of said Northern District of Illinois, in manner and form aforesaid, did unlawfully by means of false billing as aforesaid, knowingly and willfully assist said Carrier-Low Company, a corporation as aforesaid, to obtain transportation for said property in the interstate commerce aforesaid, between Joliet, Illinois, aforesaid, and Edinburg, Indiana, aforesaid, at less than the regular rates then established and then in force on the railway route and line of transportation aforesaid; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

10. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that the said Elgin, Joliet and Eastern Railway Company, corporation common carrier as in the first count of this indictment set forth and within the period of time specified therein, to-wit, on the third day of February, in the year of our Lord nineteen hundred and nine, was engaged in the transportation of property by railroad over its railway route and line of transportation from Joliet, in the State of Illinois, to Edinburg, in the State of Indiana, under a common arrangement with a certain other corporation common carrier subject to the provisions of the Act of Congress approved February 4, 1887, entitled, "An

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Act to Regulate Commerce" and acts of Congress amendatory thereof, to-wit, the Pittsburg, Cincinnati, Chicago and St. Louis Railway Company, for a continuous carriage and shipment of property in interstate commerce from Joliet aforesaid to Edinburg aforesaid, over the connecting railroads of the said corporation common carriers, that is to say, over the railroad of the said Elgin, Joliet and Eastern Railway Company from Joliet aforesaid, in the said Eastern Division of the said Northern District of Illinois, to Hartsdale, in the State of Indiana, and over the railroad of the said Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company from Hartsdale aforesaid, to Edinburg aforesaid; that within the said period of time, to-wit, on the third day of February, in the year of our Lord nineteen hundred and nine, the rate and charge for the transportation in the interstate commerce aforesaid, of certain kinds of property, to-wit, paper, wood pulp and strawboard boxes, knocked down flat, in carload lots, from Joliet aforesaid, to Edinburg aforesaid, which was then established and then in force upon the said railway route and line of transportation, was thirteen cents for each one hundred pounds thereof.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that within the period of time aforesaid, to-wit, on the third day of February, in the year of our Lord nineteen hundred and nine, and while the said rate and charge was then established and then in force on the railway route and line of transportation, as aforesaid, the said Carrier-Low Company did deliver to the said Elgin, Joliet and Eastern Railway Company for transportation in interstate commerce, to-wit, from Joliet aforesaid, through the said Eastern Division of the said Northern District of Illinois, to Edinburg aforesaid, over the said railway route and line of transportation, a large quantity, to-wit, 35,100 pounds of paper, wood pulp and strawboard boxes, knocked down flat, packed in 5981 bundles, which said property was transported by the said Elgin, Joliet and Eastern Railway Company and the said Pittsburg, Cincinnati, Chicago and St. Louis Railway Company in a car of the Chesapeake and Ohio Railway Company, numbered 2474, from Joliet aforesaid, to Edinburg aforesaid, over the said railway route and line of transportation,

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and at Edinburg aforesaid, delivered to the Union Starch and Refining Company, pursuant to request of said Carrier-Low Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Elgin, Joliet and Eastern Railway Company unlawfully did knowingly and willfully falsely classify said paper, wood pulp and strawboard boxes as strawboard, whereby, and by which device, said property was transported in interstate commerce as aforesaid from Joliet aforesaid, to Edinburg aforesaid over the said railway route and line of transportation, at a total rate and charge of ten and one-half cents for each one hundred pounds thereof, instead of thirteen cents per one hundred pounds, the regular rate and charge then established and then in force on the said railway route and line of transportation for the transportation of the said paper, wood pulp and strawboard boxes, between Joliet aforesaid, and Edinburg aforesaid.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said Elgin, Joliet and Eastern Railway Company, corporation common carrier as aforesaid, on the third day of February, in the year of our Lord nineteen hundred and nine, at Joliet aforesaid, within the said Eastern Division of said Northern District of Illinois, in manner and form aforesaid, did unlawfully by means of false classification as aforesaid, knowingly and willfully assist said Carrier-Low Company, corporation as aforesaid, to obtain transportation for said property in the interstate commerce aforesaid, between Joliet, Illinois, aforesaid, and Edinburg, Indiana, aforesaid, at less than the regular rates then established and then in force on the railway route and line of transportation aforesaid; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such cases made and provided.

11. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that the said Elgin, Joliet and Eastern Railway Company, corporation common carrier as in the first count of this indictment set forth and within the period of time specified therein, to-wit, on the third day of February, in the year of our Lord nineteen hundred and nine, was engaged in the

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transportation of property by railroad over its railway route and line of transportation from Joliet, in the State of Illinois, to Edinburg, in the State of Indiana, under a common arrangement with a certain other corporation common carrier subject to the provisions of the Act of Congress approved February 4, 1887, entitled, "An Act to Regulate Commerce", and acts of Congress amendatory thereof, to-wit, the Pittsburg, Cincinnati, Chicago and St. Louis Railway Company, for a continuous carriage and shipment of property in interstate commerce from Joliet aforesaid to Edinburg aforesaid, over the connecting railroads of the said corporation common carriers, that is to say, over the railroad of the said Elgin, Joliet and Eastern Railway Company from Joliet aforesaid, in the said Eastern Division of the said Northern District of Illinois, to Hartsdale, in the State of Indiana, and over the railroad of the said Pittsburg, Cincinnati, Chicago and St. Louis Railway Company from Hartsdale aforesaid, to Edinburg aforesaid; that within the said period of time, to-wit, on the third day of February, in the year of our Lord nineteen hundred and nine, the rate and charge for the transportation in the interstate commerce aforesaid, of certain kinds of property, to-wit, paper, wood pulp and strawboard boxes, knocked down flat, in carload lots, from Joliet aforesaid, to Edinburg aforesaid, which was then established and then in force upon the said railway route and line of transportation, was thirteen cents for each one hundred pounds thereof.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that within the period of time aforesaid, to-wit, on the third day of February, in the year of our Lord nineteen hundred and nine, and while the said rate and charge was then established and then in force on the railway route and line of transportation, as aforesaid, the said Carrier-Low Company did deliver to the said Elgin, Joliet and Eastern Railway Company for transportation in interstate commerce, to-wit, from Joliet aforesaid, through the said Eastern Division of the said Northern District of Illinois, to Edinburg aforesaid, over the said railway route and line of transportation, a large quantity, to-wit, 35,100 pounds of paper, wood pulp and strawboard boxes, knocked down flat, packed in 5981 bundles, which said property

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was transported by the said Elgin, Joliet and Eastern Railway Company and the said Pittsburg, Cincinnati, Chicago and St. Louis Railway Company in a car of the Chesapeake and Ohio Railway Company, numbered 2474, from Joliet aforesaid, to Edinburg aforesaid, over the said railway route and line of transportation, and at Edinburg aforesaid, delivered to the Union Starch and Refining Company, pursuant to request of said Carrier-Low Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Elgin, Joliet and Eastern Railway Company unlawfully did knowingly and willfully, falsely bill said paper, wood pulp and strawboard boxes as strawboard, whereby, and by which device, said property was transported in interstate commerce as aforesaid from Joliet aforesaid, to Edinburg aforesaid, over the said railway route and line of transportation, at a total rate and charge of ten and one-half cents for each one hundred pounds thereof, instead of thirteen cents per one hundred pounds, the regular rate and charge then established and then in force on the said railway route and line of transportation for the transportation of the said paper, wood pulp and strawboard boxes, between Joliet aforesaid, and Edinburg aforesaid.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said Elgin, Joliet and Eastern Railway Company, corporation common carrier as aforesaid, on the third day of February, in the year of our Lord nineteen hundred and nine, at Joliet aforesaid, within the said Eastern Division of said Northern District of Illinois, in manner and form aforesaid, did unlawfully by means of false billing as aforesaid, knowingly and willfully suffer and permit said Carrier-Low Company, corporation as aforesaid, to obtain transportation for said property in the interstate commerce aforesaid, between Joliet, Illinois, aforesaid, and Edinburg, Indiana, aforesaid, at less than the regular rates then established and then in force on the railway route and line of transportation aforesaid; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

12. And the grand jurors aforesaid, upon their oaths afore-

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said, do further present, that the said Elgin, Joliet and Eastern Railway Company, corporation common carrier as in the first count of this indictment set forth and within the period of time specified therein, to-wit, on the third day of February, in the year of our Lord nineteen hundred and nine, was engaged in the transportation of property by railroad over its railway route and line of transportation from Joliet, in the State of Illinois, to Edinburg, in the State of Indiana, under a common arrangement with a certain other corporation common carrier subject to the provisions of the Act of Congress approved February 4, 1887, entitled, "An Act to Regulate Commerce" and acts of Congress amendatory thereof, to-wit, the Pittsburg, Cincinnati, Chicago and St. Louis Railway Company, for a continuous carriage and shipment of property in interstate commerce from Joliet aforesaid to Edinburg aforesaid, over the connecting railroads of the said corporation common carriers, that is to say, over the railroad of the said Elgin, Joliet and Eastern Railway Company from Joliet aforesaid, in the said Eastern Division of the said Northern District of Illinois, at Hartsdale, in the State of Indiana, and over the railroad of the said Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company from Hartsdale aforesaid, to Edinburg aforesaid: that within the said period of time, to-wit, on the third day of February, in the year of our Lord nineteen hundred and nine, the rate and charge for the transportation in the interstate commerce aforesaid, of certain kinds of property, to-wit, paper, wood pulp and strawboard boxes, knocked down flat, in carload lots, from Joliet aforesaid, to Edinburg aforesaid, which was then established and then in force upon the said railway route and line of transportation, was thirteen cents for each one hundred pounds thereof.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that within the period of time aforesaid, to-wit, on the third day of February, in the year of our Lord nineteen hundred and nine, and while the said rate and charge was then established and then in force on the railway route and line of transportation, as aforesaid, the said Carrier-Low Company did deliver to the said Elgin, Joliet and Eastern Railway Company for transportation in interstate commerce, to-wit, from

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Joliet aforesaid, through the said Eastern Division of the said Northern District of Illinois, to Edinburg aforesaid, over the said railway route and line of transportation, a large quantity, to wit, 35,100 pounds of paper, wood pulp and strawboard boxes, knocked down flat, packed in 5981 bundles, which said property was transported by the said Elgin, Joliet and Eastern Railway Company and the said Pittsburg, Cincinnati, Chicago and St. Louis Railway Company in a car of the Chesapeake and Ohio Railway Company, numbered 2474, from Joliet aforesaid, to Edinburg aforesaid, over the said railway route and line of transportation, and at Edinburg aforesaid, delivered to the Union Starch and Refining Company, pursuant to request of said Carrier-Low Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Elgin, Joliet and Eastern Railway Company unlawfully did knowingly and willfully, falsely classify said paper, wood pulp and strawboard boxes as strawboard, whereby, and by which device, said property was transported in interstate commerce as aforesaid from Joliet aforesaid, to Edinburg aforesaid over the said railway route and line of transportation, at a total rate and charge of ten and one-half cents for each one hundred pounds thereof, instead of thirteen cents per one hundred pounds, the regular rate and charge then established and then in force on the said railway route and line of transportation for the transportation of the said paper, wood pulp and strawboard boxes, between Joliet aforesaid, and Edinburg aforesaid.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said Elgin, Joliet and Eastern Railway Company, corporation common carrier as aforesaid, on the third day of February, in the year of our Lord nineteen hundred and nine, at Joliet aforesaid, within the said Eastern Division of said Northern District of Illinois in manner and form aforesaid, did unlawfully by means of false classification as aforesaid, knowingly and willfully suffer and permit Carrier-Low Company, corporation as aforesaid, to obtain transportation for said property in the interstate commerce aforesaid, between Joliet, Illinois, aforesaid, and Edinburg, Indiana, aforesaid, at less than

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the regular rates then established and then in force on the railway route and line of transportation aforesaid; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

13. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Elgin, Joliet and Eastern Railway Company, corporation common carrier as in the first count of this indictment set forth and within the period of time specified therein, to-wit, on the tenth day of September, in the year of our Lord nineteen hundred and nine, was engaged in the transportation of property by railroad over its railway route and line of transportation from Joliet, in the State of Illinois, to Sharon, in the State of Pennsylvania, under a common arrangement with a certain other corporation common carrier subject to the provisions of the Act of Congress approved February 4, 1887, entitled "An Act to Regulate Commerce" and the acts of Congress amendatory thereof, to-wit, the Erie Railroad Company, for a continuous carriage and shipment of property in interstate commerce from Joliet aforesaid to Sharon aforesaid, over the connecting railroads of the said corporation common carriers, that is to say, over the railroad of the said Elgin, Joliet and Eastern Railway Company from Joliet aforesaid, in the said Eastern Division of the said Northern District of Illinois, to Griffith, in the State of Indiana, and over the railroad of the said Erie Railroad Company from Griffith aforesaid, to Sharon aforesaid; that within the said period of time, to-wit, on the tenth day of September, in the year of our Lord nineteen hundred and nine, the rate and charge for the transportation in the interstate commerce aforesaid, of certain kinds of property, to-wit, paper, wood pulp and strawboard boxes, knocked down flat, in carload lots from Joliet aforesaid, to Sharon aforesaid, which was then established and then in force upon the said railway route and line of transportation, was sixteen and one-half cents for each one hundred pounds thereof.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that within the period of time aforesaid, to-wit, on the tenth day of September, in the year of our Lord nineteen hundred and nine, and while the said rate and charge was then established and then in force on the railway route and line

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of transportation, as aforesaid, the said Carrier-Low Company did deliver to the said Elgin, Joliet and Eastern Railway Company for transportation in interstate commerce, to-wit, from Joliet aforesaid, through the said Eastern Division of the said Northern District of Illinois, to Sharon aforesaid, over the said railway route and line of transportation, a large quantity, to-wit, 35,200 pounds of paper, wood pulp and strawboard boxes, knocked down flat, packed in 2169 bundles; which said property was transported by the said Elgin, Joliet & Eastern Railway Company and the said Erie Railway Company in a car of the Boston and Maine Railroad Company, numbered 65,142, from Joliet aforesaid, to Sharon aforesaid, over the said railway route and line of transportation, and at Sharon aforesaid, delivered to the Masurite Explosive Company, pursuant to request of said Carrier-Low Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Elgin, Joliet and Eastern Railway Company unlawfully did knowingly and willfully, falsely bill said paper, wood pulp and strawboard boxes, whereby, and by which device, said property was transported in interstate commerce as aforesaid from Joliet aforesaid, to Sharon aforesaid, over the said railway route and line of transportation, at a total rate and charge of thirteen and one-half cents for each one hundred pounds thereof, instead of sixteen and one-half cents per hundred pounds, the regular rate and charge then established and then in force on the said railway route and line of transportation, for the transportation of the said paper, wood pulp and strawboard boxes, between Joliet aforesaid and Sharon aforesaid.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said Elgin, Joliet and Eastern Railway Company, corporation common carrier as aforesaid, on the tenth day of September, in the year of our Lord nineteen hundred and nine, at Joliet aforesaid, within the said Eastern Division of said Northern District of Illinois, in manner and form aforesaid, did unlawfully by means of false billing as aforesaid, knowingly and willfully assist said Carrier-Low Company, corporation as aforesaid, to obtain transportation for said property in the interstate commerce aforesaid, between Joliet, Illinois,

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aforesaid and Sharon, Pennsylvania, aforesaid, at less than the regular rates then established and then in force on the railway route and line of transportation aforesaid; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

14. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Elgin, Joliet and Eastern Railway Company, corporation common carrier as in the first count of this indictment set forth and within the period of time specified therein, to-wit, on the tenth day of September, in the year of our Lord nineteen hundred and nine, was engaged in the transportation of property by railroad over its railway route and line of transportation from Joliet, in the State of Illinois, to Sharon, in the state of Pennsylvania, under a common arrangement with a certain other corporation common carrier subject to the provisions of the Act of Congress approved February 4, 1887, entitled "An Act to Regulate Commerce" and the acts of Congress amendatory thereof, to-wit, the Erie Railroad Company, for a continuous carriage and shipment of property in interstate commerce from Joliet aforesaid to Sharon aforesaid, over the connecting railroads of the said corporation common carriers, that is to say, over the railroad of the said Elgin, Joliet and Eastern Railway Company from Joliet aforesaid, in the said Eastern Division of the said Northern District of Illinois, to Griffith, in the State of Indiana, and over the railroad of the said Erie Railroad Company from Griffith aforesaid, to Sharon aforesaid; that within the said period of time, to-wit, on the tenth day of September, in the year of our Lord nineteen hundred and nine, the rate and charge for the transportation in the interstate commerce aforesaid, of certain kinds of property, to-wit, paper, wood pulp and strawboard boxes, knocked down flat, in carload lots from Joliet aforesaid, to Sharon aforesaid, which was then established and then in force upon the said railway route and line of transportation, was sixteen and one-half cents for each one hundred pounds thereof.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that within the period of time aforesaid, to-wit, on the tenth day of September, in the year of our Lord nineteen hundred and nine, and while the said rate and charge

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was then established and then in force on the railway route and line of transportation, as aforesaid, the said Carrier-Low Company did deliver to the said Elgin, Joliet and Eastern Railway Company for transportation in interstate commerce, to-wit, from Joliet aforesaid, through the said Eastern Division of the said Northern District of Illinois, to Sharon aforesaid, over the said railway route and line of transportation, a large quantity, to-wit, 35,200 pounds of paper, wood pulp and strawboard boxes, knocked down flat, packed in 2169 bundles; which said property was transported by the said Elgin, Joliet & Eastern Railway Company and the said Erie Railroad Company in a car of the Boston and Maine Railroad Company, numbered 65,142, from Joliet aforesaid, to Sharon aforesaid, over the said railway route and line of transportation, and at Sharon aforesaid, delivered to the Masurite Explosive Company, pursuant to request of said Carrier-Low Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Elgin, Joliet and Eastern Railway Company unlawfully did knowingly and willfully, falsely classify said paper, wood pulp and strawboard boxes, as strawboard, whereby, and by which device, said property was transported in interstate commerce as aforesaid from Joliet aforesaid, to Sharon aforesaid, over the said railway route and line of transportation, at a total rate and charge of thirteen and one-half cents for each one hundred pounds thereof, instead of sixteen and one-half cents per hundred pounds, the regular rate and charge then established and then in force on the said railway route and line of transportation, for the transportation of the said paper, wood pulp and strawboard boxes, between Joliet aforesaid and Sharon aforesaid.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said Elgin, Joliet and Eastern Railway Company, corporation common carrier as aforesaid, on the tenth day of September, in the year of our Lord nineteen hundred and nine, at Joliet aforesaid, within the said Eastern Division of said Northern District of Illinois, in manner and form aforesaid, did unlawfully by means of false classification as aforesaid, knowingly and willfully assist said Carrier-Low Company, corporation as

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aforesaid, to obtain transportation for said property in the interstate commerce aforesaid, between Joliet, Illinois, aforesaid and Sharon, Pennsylvania, aforesaid, at less than the regular rates then established and then in force on the railway route and line of transportation aforesaid; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

15. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Elgin, Joliet and Eastern Railway Company, corporation common carrier as in the first count of this indictment set forth and within the period of time specified therein, to wit, on the tenth day of September, in the year of our Lord nineteen hundred and nine, was engaged in the transportation of property by railroad over its railway route and line of transportation, from Joliet, in the State of Illinois, to Sharon in the State of Pennsylvania, under a common arrangement with a certain other corporation common carrier, subject to the provisions of the Act of Congress approved February 4, 1887, entitled "An Act to Regulate Commerce", and acts of Congress amendatory thereof, to wit, the Erie Railroad Company, for a continuous carriage and shipment of property in interstate commerce from Joliet aforesaid to Sharon aforesaid, over the connecting railroads of the said corporation common carriers, that is to say, over the railroad of the said Elgin, Joliet and Eastern Railway Company from Joliet aforesaid, in the said Eastern Division of the said Northern District of Illinois, to Griffith, in the state of Indiana, and over the railroad of the said Erie Railroad Company from Griffith aforesaid, to Sharon aforesaid; that within the said period of time, to wit, on the tenth day of September, in the year of our Lord nineteen hundred and nine, the rate and charge for the transportation in the interstate commerce aforesaid, of certain kinds of property, to wit, paper, wood pulp and straw-board boxes, knocked down, flat, in carload lots from Joliet aforesaid, to Sharon aforesaid, which was then established and then in force upon the said railway route and line of transportation, was sixteen and one-half cents for each one hundred pounds thereof.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that within the period of time aforesaid, to

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wit, on the tenth day of September, in the year of our Lord nineteen hundred and nine, and while the said rate and charge was then established, and then in force on the railway route and line of transportation as aforesaid, the said Carrier-Low Company did deliver to the said Elgin, Joliet and Eastern Railway Company for transportation in interstate commerce, to wit, from Joliet aforesaid, through the said Eastern Division of the said Northern District of Illinois, to Sharon aforesaid, over the said railway route and line of transportation, a large quantity, to-wit, 35,200 pounds of paper, wood pulp and strawboard boxes, knocked down flat, packed in 2169 bundles; which said property was transported by the said Elgin, Joliet & Eastern Railway Company and the said Erie Railroad Company in a car of the Boston and Maine Railroad Company, numbered 65,142, from Joliet aforesaid, to Sharon aforesaid, over the said railway route and line of transportation, and at Sharon aforesaid, delivered to the Masurite Explosive Company, pursuant to request of said Carrier-Low Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Elgin, Joliet and Eastern Railway Company unlawfully did knowingly and willfully, falsely bill said paper, wood pulp and strawboard boxes, as strawboard, whereby, and by which device, said property was transported in interstate commerce as aforesaid from Joliet aforesaid, to Sharon aforesaid, over the said railway route and line of transportation, at a total rate and charge of thirteen and one-half cents for each one hundred pounds thereof, instead of sixteen and one-half cents per one hundred pounds, the regular rate and charge then established and then in force on the said railway route and line of transportation, for the transportation of the said paper, wood pulp and strawboard boxes, between Joliet aforesaid and Sharon aforesaid.

And so' the grand jurors aforesaid, upon their oath aforesaid, do say, that the said Elgin, Joliet and Eastern Railway Company, corporation common carrier as aforesaid, on the tenth day of September, in the year of our Lord nineteen hundred and nine, at Joliet aforesaid, within the said Eastern Division of said Northern District of Illinois, in manner and

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form aforesaid, did unlawfully by means of false billing as aforesaid, knowingly and willfully suffer and permit said Carrier-Low Company, corporation as aforesaid, to obtain transportation for said property in the interstate commerce aforesaid, between Joliet, Illinois, aforesaid and Sharon, Pennsylvania, aforesaid, at less than the regular rates then established and then in force on the railway route and line of transportation aforesaid; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

16. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Elgin, Joliet and Eastern Railway Company, corporation common carrier as in the first count of this indictment set forth and within the period of time specified therein, to-wit, on the tenth day of September, in the year of our Lord nineteen hundred and nine, was engaged in the transportation of property by railroad over its railway route and line of transportation from Joliet, in the State of Illinois, to Sharon, in the State of Pennsylvania, under a common arrangement with a certain other corporation common carrier subject to the provisions of the Act of Congress approved February 4, 1887, entitled "An Act to Regulate Commerce" and the acts of Congress amendatory thereof, to-wit, the Erie Railroad Company, for a continuous carriage and shipment of property in interstate commerce from Joliet aforesaid to Sharon aforesaid, over the connecting railroads of the said corporation common carriers, that is to say, over the railroad of the said Elgin, Joliet and Eastern Railway Company from Joliet aforesaid, in the said Eastern Division of the said Northern District of Illinois, to Griffith, in the State of Indiana, and over the railroad of the said Erie Railroad Company from Griffith aforesaid, to Sharon aforesaid; that within the said period of time, to-wit, on the tenth day of September, in the year of our Lord nineteen hundred and nine, the rate and charge for the transportation in the interstate commerce aforesaid, of certain kinds of property, to-wit, paper, wood pulp and strawboard boxes, knocked down flat, in carload lots from Joliet aforesaid, to Sharon aforesaid, which was then established and then in force upon the said railway route and line of transportation, was sixteen and one-half cents for each one hundred pounds thereof.

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And the grand jurors aforesaid, upon their oath aforesaid, do further present, that within the period of time aforesaid, to-wit, on the tenth day of September, in the year of our Lord nineteen hundred and nine, and while the said rate and charge was then established and then in force on the railway route and line of transportation, as aforesaid, the said Carrier-Low Company did deliver to the said Elgin, Joliet and Eastern Railway Company for transportation in interstate commerce, to-wit, from Joliet aforesaid, through the said Eastern Division of the said Northern District of Illinois, to Sharon aforesaid, over the said railway route and line of transportation, a large quantity, to-wit, 35,200 pounds of paper, wood pulp and strawboard boxes, knocked down flat, packed in 2169 bundles; which said property was transported by the said Elgin, Joliet & Eastern Railway Company and the said Erie Railway Company in a car of the Boston and Maine Railroad Company, numbered 65,142, from Joliet aforesaid, to Sharon aforesaid, over the said railway route and line of transportation, and at Sharon aforesaid, delivered to the Masurite Explosive Company, pursuant to request of said Carrier-Low Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further represent, that the said Elgin, Joliet and Eastern Railway Company unlawfully did knowingly and willfully, falsely classify said paper, wood pulp and strawboard boxes, as strawboard, whereby, and by which device, said property was transported in interstate commerce as aforesaid from Joliet aforesaid, to Sharon aforesaid, over the said railway route and line of transportation, at a total rate and charge of thirteen and one-half cents for each one hundred pounds thereof, instead of sixteen and one-half cents per hundred pounds, the regular rate and charge then established and then in force on the railway route and line of transportation, for the transportation of the said paper, wood pulp and strawboard boxes, between Joliet aforesaid and Sharon aforesaid.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said Elgin, Joliet and Eastern Railway Company, corporation common carrier as aforesaid, on the tenth day of September, in the year of our Lord nineteen hundred and nine, at Joliet aforesaid, within the said Eastern

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Division of said Northern District of Illinois, in manner and form aforesaid, did unlawfully by means of false classification as aforesaid, knowingly and willfully suffer and permit said Carrier-Low Company, corporation as aforesaid, to obtain transportation for said property in the interstate commerce aforesaid, between Joliet, Illinois, aforesaid and Sharon, Pennsylvania, aforesaid, at less than the regular rates then established and then in force on the railway route and line of transportation aforesaid; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

17. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Elgin, Joliet & Eastern Railway Company, corporation common carrier as in the first count of this indictment set forth and within the period of time specified therein, to-wit, on the tenth day of October, in the year of our Lord nineteen hundred and nine, was engaged in the transportation of property by railroad over its railway route and line of transportation, from Joliet, in the State of Illinois, to New Orleans, in the state of Louisiana, under a common arrangement with a certain other corporation common carrier subject to the provisions of the act of Congress approved February 4, 1887, entitled, "An Act to Regulate Commerce" and acts of Congress amendatory thereof, to-wit the Illinois Central Railroad Company, for a continuous carriage and shipment of property in interstate commerce from Joliet aforesaid to New Orleans aforesaid, over the connecting railroads of the said corporation common carriers, that is to say, over the railroad of the Elgin, Joliet and Eastern Railway Company from Joliet aforesaid, in the said Eastern Division of the said Northern District of Illinois, to Matteson, in the State of Illinois, and over the railroad of the said Illinois Central Railroad Company from Matteson aforesaid, to New Orleans aforesaid; that within the said period of time, to-wit, on the tenth day of October, in the year of our Lord nineteen hundred and nine, the rate and charge for the transportation in the interstate commerce aforesaid, of certain kinds of property, to-wit, paper, wood pulp and strawboard boxes, knocked down flat, in carload lots from Joliet aforesaid, to New Orleans aforesaid,

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said, which was then established and then in force upon the said railway route and line of transportation, was forty-seven cents for each one hundred pounds thereof.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that within the period of time aforesaid, to-wit, on the tenth day of October, in the year of our Lord nineteen hundred and nine, and while the said rate and charge was then established and then in force on the railway route and line of transportation as aforesaid, the said Carrier-Low Company did deliver to the said Elgin, Joliet and Eastern Railway Company for transportation in interstate commerce, to-wit, from Joliet aforesaid, through the said Eastern Division of the said Northern District of Illinois, to New Orleans aforesaid, over the said railway route and line of transportation, a large quantity, to-wit 40,600 pounds of paper, wood pulp and strawboard boxes, knocked down flat, packed in 875 bundles; which said property was transported by the said Elgin, Joliet and Eastern Railway Company and the said Illinois Central Railroad Company, in a car of the Boston and Maine Railroad Company, numbered 63,219, from Joliet aforesaid, to New Orleans aforesaid, over the said railway route and line of transportation, and at New Orleans aforesaid, delivered to the Vories Baking Company, pursuant to request of said Carrier-Low Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Elgin, Joliet & Eastern Railway Company, unlawfully did knowingly and willfully, falsely bill said paper, wood pulp and strawboard boxes as strawboard, whereby, and by which device, said property was transported in interstate commerce as aforesaid from Joliet aforesaid, to New Orleans aforesaid, over the said railway route and line of transportation, at a total rate and charge of thirty-one cents for each one hundred pounds thereof, instead of forty-seven cents per one hundred pounds, the regular rate and charge then established and then in force on the said railway route and line of transportation, for the transportation of the said paper, wood pulp and strawboard boxes, between Joliet aforesaid, and New Orleans aforesaid.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said Elgin, Joliet and Eastern Railway

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Company, corporation common carrier as aforesaid, on the tenth day of October, in the year of our Lord nineteen hundred and nine, at Joliet aforesaid, within the said Eastern Division of said Northern District of Illinois, in manner and form aforesaid, did unlawfully by means of false billing as aforesaid, knowingly and willfully assist said Carrier-Low Company, corporation as aforesaid, to obtain transportation for said property in the interstate commerce aforesaid, between Joliet, Illinois, aforesaid, and New Orleans, Louisiana, aforesaid, at less than the regular rates then established and then in force on the railway route and line of transportation aforesaid; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

18. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Elgin, Joliet & Eastern Railway Company, corporation common carrier as in the first count of this indictment set forth and within the period of time specified therein, to-wit, on the tenth day of October, in the year of our Lord nineteen hundred and nine, was engaged in the transportation of property by railroad over its railway route and line of transportation, from Joliet, in the State of Illinois, to New Orleans, in the state of Louisiana, under a common arrangement with a certain other corporation common carrier subject to the provisions of the act of Congress approved February 4, 1887, entitled, "An Act to Regulate Commerce" and acts of Congress amendatory thereof, to-wit, the Illinois Central Railroad Company, for a continuous carriage and shipment of property in interstate commerce from Joliet aforesaid to New Orleans aforesaid, over the connecting railroads of the said corporation common carrier, that is to say, over the railroad of the Elgin, Joliet and Eastern Railway Company from Joliet aforesaid, in the said Eastern Division of the said Northern District of Illinois, to Matteson, in the State of Illinois, and over the railroad of the said Illinois Central Railroad Company from Matteson aforesaid, to New Orleans aforesaid; that within the said period of time, to-wit, on the tenth day of October, in the year of our Lord nineteen hundred and nine, the rate and charge for the transportation in the interstate commerce aforesaid, of certain kinds of property, to-wit, paper, wood pulp

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and strawboard boxes, knocked down flat, in carload lots from Joliet aforesaid, to New Orleans aforesaid, which was then established and then in force upon the said railway route and line of transportation, was forty-seven cents for each one hundred pounds thereof.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that within the period of time aforesaid, to-wit, on the tenth day of October, in the year of our Lord nineteen hundred and nine, and while the said rate and charge was then established and then in force on the railway route and line of transportation as aforesaid, the said Carrier-Low Company did deliver to the said Elgin, Joliet and Eastern Railway Company for transportation in interstate commerce, to-wit, from Joliet aforesaid, through the said Eastern Division of the said Northern District of Illinois, to New Orleans aforesaid, over the said railway route and line of transportation, a large quantity, to-wit, 40,600 pounds of paper, wood pulp and strawboard boxes, knocked down flat, packed in 875 bundles; which said property was transported by the said Elgin, Joliet and Eastern Railway Company and the said Illinois Central Railroad Company, in a car of the Boston and Maine Railroad Company, numbered 63,219, from Joliet aforesaid, to New Orleans aforesaid, over the said railway route and line of transportation, and at New Orleans aforesaid, delivered to the Vories Baking Company, pursuant to request of said Carrier-Low Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Elgin, Joliet & Eastern Railway Company, unlawfully did knowingly and willfully, falsely classify said paper, wood pulp and strawboard boxes as strawboard, whereby, and by which device, said property was transported in interstate commerce as aforesaid from Joliet aforesaid, to New Orleans aforesaid, over the said railway route and line of transportation, at a total rate and charge of thirty-one cents for each one hundred pounds thereof, instead of forty-seven cents per one hundred pounds, the regular rate and charge then established and then in force on the said railway route and line of transportation, for the transportation of the said paper, wood pulp and strawboard boxes, between Joliet aforesaid, and New Orleans aforesaid.

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And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said Elgin, Joliet and Eastern Railway Company, corporation common carrier as aforesaid, on the tenth day of October, in the year of our Lord nineteen hundred and nine, at Joliet aforesaid, within the said Eastern Division of said Northern District of Illinois, in manner and form aforesaid, did unlawfully by means of false classification as aforesaid, knowingly and willfully assist said Carrier-Low Company, corporation as aforesaid, to obtain transportation for said property in the interstate commerce aforesaid, between Joliet, Illinois, aforesaid, and New Orleans, Louisiana, aforesaid, at less than the regular rates then established and then in force on the railway route and line of transportation aforesaid; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

19. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Elgin, Joliet & Eastern Railway Company, corporation common carrier as in the first count of this indictment set forth and within the period of time specified therein, to-wit, on the tenth day of October, in the year of our Lord nineteen hundred and nine, was engaged in the transportation of property by railroad over its railway route and line of transportation, from Joliet, in the State of Illinois, to New Orleans, in the state of Louisiana, under a common arrangement with a certain other corporation common carrier subject to the provisions of the act of Congress approved February 4, 1887, entitled, "An Act to Regulate Commerce" and acts of Congress amendatory thereof, to-wit, the Illinois Central Railroad Company, for a continuous carriage and shipment of property in interstate commerce from Joliet aforesaid to New Orleans aforesaid, over the connecting railroads of the said corporation common carriers, that is to say, over the railroad of the Elgin, Joliet and Eastern Railway Company from Joliet aforesaid, in the said Eastern Division of the said Northern District of Illinois, to Matteson, in the State of Illinois, and over the railroad of the said Illinois Central Railroad Company from Matteson aforesaid, to New Orleans aforesaid; that within the said period of time, to-wit, on the tenth day of October, in the year of our

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Lord nineteen hundred and nine, the rate and charge for the transportation in the interstate commerce aforesaid, of certain kinds of property, to-wit, paper, wood pulp and strawboard boxes, knocked down flat, in carload lots from Joliet aforesaid, to New Orleans aforesaid, which was then established and then in force upon the said railway route and line of transportation was forty-seven cents for each one hundred pounds thereof.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that within the period of time aforesaid, to-wit, on the tenth day of October, in the year of our Lord nineteen hundred and nine, and while the said rate and charge was then established and then in force on the railway route and line of transportation as aforesaid, the said Carrier-Low Company did deliver to the said Elgin, Joliet and Eastern Railway Company for transportation in interstate commerce, to-wit, from Joliet aforesaid, through the said Eastern Division of the said Northern District of Illinois, to New Orleans aforesaid, over the said railway route and line of transportation, a large quantity, to-wit, 40,600 pounds of paper, wood pulp and strawboard boxes knocked down flat, packed in 875 bundles; which said property was transported by the said Elgin, Joliet and Eastern Railway Company and the said Illinois Central Railroad Company, in a car of the Boston and Maine Railroad Company, numbered 63,219, from Joliet aforesaid, to New Orleans aforesaid, over the said railway route and line of transportation, and at New Orleans aforesaid, delivered to the Vories Baking Company, pursuant to request of said Carrier-Low Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Elgin, Joliet and Eastern Railway Company, unlawfully did knowingly and willfully, falsely bill said paper, wood pulp and strawboard boxes as strawboard, whereby, and by which device, said property was transported in interstate commerce as aforesaid from Joliet aforesaid, to New Orleans aforesaid, over the said railway route and line of transportation, at a total rate and charge of thirty-one cents for each one hundred pounds thereof, instead of forty-seven cents per one hundred pounds, the regular rate and charge then established and then in force on the

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said railway route and line of transportation, for the transportation of the said paper, wood pulp and strawboard boxes, between Joliet aforesaid, and New Orleans aforesaid.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said Elgin, Joliet and Eastern Railway Company, corporation common carrier as aforesaid, on the tenth day of October, in the year of our Lord nineteen hundred and nine, at Joliet aforesaid, within the said Eastern Division of said Northern District of Illinois, in manner and form aforesaid, did unlawfully by means of false billing as aforesaid, knowingly and willfully suffer and permit said Carrier-Low Company, corporation as aforesaid, to obtain transportation for said property in the interstate commerce aforesaid, between Joliet, Illinois, aforesaid, and New Orleans, Louisiana, aforesaid, at less than the regular rates then established and then in force on the railway route and line of transportation aforesaid; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

20. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Elgin, Joliet & Eastern Railway Company, corporation common carrier as in the first count of this indictment set forth and within the period of time specified therein, to-wit, on the tenth day of October, in the year of our Lord nineteen hundred and nine, was engaged in the transportation of property by railroad over its railway route and line of transportation, from Joliet, in the State of Illinois, to New Orleans, in the State of Louisiana, under a common arrangement with a certain other corporation common carrier subject to the provisions of the act of Congress approved February 4, 1887, entitled, "An Act to Regulate Commerce" and acts of Congress amendatory thereof, to-wit, the Illinois Central Railroad Company, for a continuous carriage and shipment of property in interstate commerce from Joliet aforesaid to New Orleans aforesaid, over the connecting railroads of the said corporation common carriers, that is to say, over the railroad of the Elgin, Joliet and Eastern Railway Company from Joliet aforesaid, in the said Eastern Division of the said Northern District of Illinois, to Matteson, in the State of Illinois, and over the railroad of the said Illinois

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Central Railroad Company from Matteson aforesaid, to New Orleans aforesaid; that within the said period of time, to-wit, on the tenth day of October, in the year of our Lord nineteen hundred and nine, the rate and charge for the transportation in the interstate commerce aforesaid, of certain kinds of property, to-wit, paper, wood pulp and strawboard boxes, knocked down flat, in carload lots from Joliet aforesaid, to New Orleans aforesaid, which was then established and then in force upon the said railway route and line of transportation, was forty-seven cents for each one hundred pounds thereof.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that within the period of time aforesaid, to-wit, on the tenth day of October, in the year of our Lord nineteen hundred and nine, and while the said rate and charge was then established and then in force on the railway route and line of transportation as aforesaid, the said Carrier-Low Company did deliver to the said Elgin, Joliet and Eastern Railway Company for transportation in interstate commerce, to-wit, from Joliet aforesaid, through the said Eastern Division of the said Northern District of Illinois, to New Orleans aforesaid, over the said railway route and line of transportation, a large quantity, to wit 40,600 pounds of paper, wood pulp and strawboard boxes, knocked down flat, packed in 875 bundles; which said property was transported by the said Elgin, Joliet and Eastern Railway Company and the said Illinois Central Railroad Company, in a car of the Boston and Maine Railroad Company, numbered 63,219, from Joliet aforesaid, to New Orleans aforesaid, over the said railway route and line of transportation, and at New Orleans aforesaid, delivered to the Vories Baking Company, pursuant to request of said Carrier-Low Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Elgin, Joliet & Eastern Railway Company, unlawfully did knowingly and willfully, falsely classify said paper, wood pulp and strawboard boxes as strawboard, whereby, and by which device, said property was transported in interstate commerce as aforesaid from Joliet aforesaid, to New Orleans aforesaid, over the said railway route and line of transportation, at a total rate and charge of thirty-one cents for each

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one hundred pounds thereof, instead of forty-seven cents per one hundred pounds, the regular rate and charge then established and then in force on the said railway route and line of transportation, for the transportation of the said paper, wood pulp and strawboard boxes, between Joliet aforesaid, and New Orleans aforesaid.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said Elgin, Joliet and Eastern Railway Company, corporation common carrier as aforesaid, on the tenth day of October, in the year of our Lord nineteen hundred and nine at Joliet aforesaid, within the said Eastern Division of said Northern District of Illinois, in manner and form aforesaid, did unlawfully by means of false classification as aforesaid, knowingly and willfully suffer and permit said Carrier-Low Company, corporation as aforesaid, to obtain transportation for said property in the interstate commerce aforesaid, between Joliet, Illinois, aforesaid, and New Orleans, Louisiana, aforesaid, at less than the regular rates then established and then in force on the railway route and line of transportation aforesaid; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

21. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Elgin, Joliet and Eastern Railway Company, corporation common carrier as in the first count of this indictment set forth and within the period of time specified therein, to-wit, on the thirteenth day of September, in the year of our Lord, nineteen hundred and nine, was engaged in the transportation of property by railroad over its railway route and line of transportation from Joliet, in the State of Illinois, to Fort Dodge, in the State of Iowa, under a common arrangement with a certain other corporation common carrier subject to the provisions of the act of Congress approved February 4, 1887, entitled, "An Act to Regulate Commerce" and acts of Congress amendatory thereof, to-wit, the Illinois Central Railroad Company for a continuous carriage and shipment of property in interstate commerce from Joliet aforesaid, to Fort Dodge aforesaid, over the connecting railroads of the said corporation common carriers, that is to say, over the railroad of the said Elgin, Joliet and Eastern Railway Company from Joliet aforesaid, in the said

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Eastern Division of the said Northern District of Illinois, to Munger, in the State of Illinois, and over the railroad of the said Illinois Central Railroad Company from Munger aforesaid to Fort Dodge aforesaid; that within the said period of time, to-wit, on the thirteenth day of September, in the year of our Lord, nineteen hundred and nine, the rate and charge for the transportation in the interstate commerce aforesaid, of certain kinds of property, to-wit, paper, wood pulp and strawboard boxes, knocked down flat, in carload lots from Joliet aforesaid, to Fort Dodge aforesaid, which was then established and then in force upon the said railway route and line of transportation, was twenty-two cents for each one hundred pounds thereof.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that within the period of time aforesaid, to-wit, on the thirteenth day of September, in the year of our Lord, nineteen hundred and nine, and while the said rate and charge was then established and then in force on the railway route and line of transportation as aforesaid, the said Carrier-Low Company did deliver to the said Elgin, Joliet and Eastern Railway Company for transportation in interstate commerce, to-wit, from Joliet aforesaid, through the said Eastern Division of the said Northern District of Illinois, to Fort Dodge aforesaid, over the said railway route and line of transportation, a large quantity, to-wit, 43,000 pounds of paper, wood pulp and strawboard boxes, knocked down flat, packed in 2023 bundles; which said property was transported by the said Elgin, Joliet and Eastern Railway Company and the said Illinois Central Railroad Company, in a car of the Elgin, Joliet and Eastern Railway Company, numbered 7275, from Joliet aforesaid, to Fort Dodge aforesaid over the said railway route and line of transportation, and at Fort Dodge aforesaid, delivered to the Great Western Cereal Company, pursuant to request of said Carrier-Low Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Elgin, Joliet and Eastern Railway Company, unlawfully did knowingly and willfully, falsely bill said paper, wood pulp and strawboard boxes as strawboard, whereby, and by which device, said property was transported in interstate commerce as aforesaid, from Joliet, aforesaid, to Fort

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Dodge aforesaid, over the said railway route and line of transportation, at a total rate and charge of fifteen cents for each one hundred pounds thereof, instead of twenty-two cents per hundred pounds, the regular rate and charge then established and then in force on the said railway route and line of transportation, for the transportation of the said paper, wood pulp and strawboard boxes, between Joliet, aforesaid, and Fort Dodge aforesaid.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said Elgin, Joliet and Eastern Railway Company, corporation common carrier as aforesaid, and on the thirteenth day of September, in the year of our Lord, nineteen hundred and nine, at Joliet aforesaid, within the said Eastern Division of the said Northern District of Illinois, in manner and form aforesaid, did unlawfully, by means of false billing as aforesaid knowingly and willfully assist the said Carrier-Low Company, corporation as aforesaid, to obtain transportation for said property in the interstate commerce aforesaid, between Joliet, Illinois, aforesaid, and Fort Dodge, Iowa, aforesaid, at less than the regular rates then established and then in force on the said railway route and line of transportation aforesaid; against the peace and dignity of the said United States and contrary to the form of the statute of the same in such case made and provided.

22. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Elgin, Joliet and Eastern Railway Company, corporation common carrier as in the first count of this indictment set forth and within the period of time specified therein, to-wit, on the thirteenth day of September, in the year of our Lord, nineteen hundred and nine, was engaged in the transportation of property by railroad over its railway route and line of transportation from Joliet, in the state of Illinois, to Fort Dodge, in the State of Iowa, under a common arrangement with a certain other corporation common carrier, subject to the provisions of the act of Congress approved February 4, 1887, entitled, "An Act to Regulate Commerce" and acts of Congress amendatory thereof, to-wit, the Illinois Central Railroad Company for a continuous carriage and shipment of property in interstate commerce from Joliet aforesaid, to Fort Dodge aforesaid, over the connecting railroads of the said corporation common carriers, that is to say,

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over the railroad of the said Elgin, Joliet and Eastern Railway Company from Joliet aforesaid, in the said Eastern Division of the said Northern District of Illinois, to Munger, in the State of Illinois, and over the railroad of the said Illinois Central Railroad Company from Munger aforesaid to Fort Dodge aforesaid; that within the said period of time, to-wit, on the thirteenth day of September, in the year of our Lord, nineteen hundred and nine, the rate and charge for the transportation in the interstate commerce aforesaid, of certain kinds of property, to-wit, paper, wood pulp and strawboard boxes, knocked down flat, in carload lots from Joliet aforesaid, to Fort Dodge aforesaid, which was then established and then in force upon the said railway route and line of transportation, was twenty-two cents for each one hundred pounds thereof.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that within the period of time aforesaid, to-wit, on the thirteenth day of September, in the year of our Lord, nineteen hundred and nine, and while the said rate and charge was then established and then in force on the railway route and line of transportation as aforesaid, the said Carrier-Low Company did deliver to the said Elgin, Joliet and Eastern Railway Company for transportation in interstate commerce, to-wit, from Joliet aforesaid, through the said Eastern Division of the said Northern District of Illinois, to Fort Dodge aforesaid, over the said railway route and line of transportation, a large quantity, to-wit, 43,000 pounds of paper, wood pulp and strawboard boxes, knocked down flat, packed in 2023 bundles; which said property was transported by the said Elgin, Joliet and Eastern Railway Company and the said Illinois Central Railroad Company, in a car of the Elgin, Joliet and Eastern Railway Company, numbered 7275, from Joliet aforesaid, to Fort Dodge aforesaid over the said railway route and line of transportation, and at Fort Dodge aforesaid, delivered to the Great Western Cereal Company, pursuant to request of said Carrier-Low Company.

'And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Elgin, Joliet and Eastern Railway Company, unlawfully did knowingly and willfully, falsely classify said paper, wood pulp and strawboard boxes

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as strawboard, whereby, and by which device, said property was transported in interstate commerce as aforesaid, from Joliet, aforesaid, to Fort Dodge aforesaid, over the said railway route and line of transportation, at a total rate and charge of fifteen cents for each one hundred pounds thereof, instead of twenty-two cents per hundred pounds, the regular rate and charge then established and then in force on the said railway route and line of transportation, for the transportation of the said paper, wood pulp and strawboard boxes, between Joliet, aforesaid, and Fort Dodge aforesaid.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said Elgin, Joliet and Eastern Railway Company, corporation common carrier as aforesaid, and on the thirteenth day of September, in the year of our Lord, nineteen hundred and nine, at Joliet aforesaid, within the said Eastern Division of the said Northern District of Illinois, in manner and form aforesaid, did unlawfully, by means of false classification as aforesaid, knowingly and willfully assist the said Carrier-Low Company, corporation as aforesaid, to obtain transportation for said property in the interstate commerce aforesaid, between Joliet, Illinois, aforesaid, and Fort Dodge, Iowa, aforesaid, at less than the regular rates then established and then in force on the said railway route and line of transportation aforesaid; against the peace and dignity of the said United States and contrary to the form of the statute of the same in such case made and provided.

23. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Elgin, Joliet and Eastern Railway Company, corporation common carrier as in the first count of this indictment set forth and within the period of time specified therein, to-wit, on the thirteenth day of September, in the year of our Lord, nineteen hundred and nine, was engaged in the transportation of property by railroad over its railway route and line of transportation from Joliet, in the State of Illinois, to Fort Dodge, in the State of Iowa, under a common arrangement with a certain other corporation common carrier subject to the provisions of the act of Congress approved February 4, 1887, entitled, "An Act to Regulate Commerce" and acts of Congress

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amendatory thereof, to-wit, the Illinois Central Railroad Company for a continuous carriage and shipment of property in interstate commerce from Joliet aforesaid, to Fort Dodge aforesaid, over the connecting railroads of the said corporation common carriers, that is to say, over the railroad of the said Elgin, Joliet and Eastern Railway Company from Joliet aforesaid, in the said Eastern Division of the said Northern District of Illinois, to Munger, in the State of Illinois, and over the railroad of the said Illinois Central Railroad Company from Munger aforesaid to Fort Dodge aforesaid; that within the said period of time, to-wit, on the thirteenth day of September, in the year of our Lord, nineteen hundred and nine, the rate and charge for the transportation in the interstate commerce aforesaid, of certain kinds of property, to-wit, paper, wood pulp and strawboard boxes, knocked down flat, in carload lots from Joliet aforesaid, to Fort Dodge aforesaid, which was then established and then in force upon the said railway route and line of transportation, was twenty-two cents for each one hundred pounds thereof.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that within the period of time aforesaid, to-wit, on the thirteenth day of September, in the year of our Lord, nineteen hundred and nine, and while the said rate and charge was then established and then in force on the railway route and line of transportation as aforesaid, the said Carrier-Low Company did deliver to the said Elgin, Joliet and Eastern Railway Company for transportation in interstate commerce, to-wit, from Joliet aforesaid, through the said Eastern Division of the said Northern District of Illinois, to Fort Dodge aforesaid, over the said railway route and line of transportation, a large quantity, to-wit, 43,000 pounds of paper, wood pulp and strawboard boxes, knocked down flat, packed in 2023 bundles; which said property was transported by the said Elgin, Joliet and Eastern Railway Company and the said Illinois Central Railroad Company, in a car of the Elgin, Joliet and Eastern Railway Company, numbered 7275, from Joliet aforesaid, to Fort Dodge aforesaid over the said railway route and line of transportation, and at Fort Dodge aforesaid, delivered to the Great Western Cereal Company, pursuant to request of said Carrier-Low Company.

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And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Elgin, Joliet and Eastern Railway Company, unlawfully did knowingly and willfully, falsely bill said paper, wood pulp and strawboard boxes as strawboard, whereby, and by which device, said property was transported in interstate commerce as aforesaid, from Joliet, aforesaid, to Fort Dodge aforesaid, over the said railway route and line of transportation, at a total rate and charge of fifteen cents for each one hundred pounds thereof, instead of twenty-two cents per hundred pounds, the regular rate and charge then established and then in force on the said railway route and line of transportation, for the transportation of the said paper, wood pulp and strawboard boxes, between Joliet, aforesaid, and Fort Dodge aforesaid.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said Elgin, Joliet and Eastern Railway Company, corporation common carrier as aforesaid, and on the thirteenth day of September, in the year of our Lord, nineteen hundred and nine, at Joliet aforesaid, within the said Eastern Division of the said Northern District of Illinois, in manner and form aforesaid, did unlawfully, by means of false billing as aforesaid, knowingly and willfully suffer and permit the said Carrier-Low Company, corporation as aforesaid, to obtain transportation for said property in the interstate commerce aforesaid, between Joliet, Illinois, aforesaid, and Fort Dodge, Iowa, aforesaid, at less than the regular rates then established and then in force on the said railway route and line of transportation aforesaid; against the peace and dignity of the said United States and contrary to the form of the statute of the same in such case made and provided.

24. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Elgin, Joliet and Eastern Railway Company, corporation common carrier as in the first count of this indictment set forth and within the period of time specified therein, to-wit, on the thirteenth day of September, in the year of our Lord, nineteen hundred and nine, was engaged in the transportation of property by railroad over its railway route and line of transportation from Joliet, in the state of Illinois, to

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Fort Dodge, in the State of Iowa, under a common arrangement with a certain other corporation common carrier subject to the provisions of the act of Congress approved February 4, 1887, entitled, "An Act to Regulate Commerce" and acts of Congress amendatory thereof, to-wit, the Illinois Central Railroad Company for a continuous carriage and shipment of property in interstate commerce from Joliet aforesaid, to Fort Dodge aforesaid, over the connecting railroads of the said corporation common carriers, that is to say, over the railroad of the said Elgin, Joliet and Eastern Railway Company from Joliet aforesaid, in the said Eastern Division of the said Northern District of Illinois, to Munger, in the State of Illinois, and over the railroad of the said Illinois Central Railroad Company from Munger aforesaid to Fort Dodge aforesaid; that within the said period of time, to-wit, on the thirteenth day of September, in the year of our Lord, nineteen hundred and nine, the rate and charge for the transportation in the interstate commerce aforesaid, of certain kinds of property, to-wit, paper, wood pulp and strawboard boxes, knocked down flat, in carload lots from Joliet aforesaid, to Fort Dodge aforesaid, which was then established and then in force upon the said railway route and line of transportation, was twenty-two cents for each one hundred pounds thereof.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that within the period of time aforesaid, to-wit, on the thirteenth day of September, in the year of our Lord, nineteen hundred and nine, and while the said rate and charge was then established and then in force on the railway route and line of transportation as aforesaid, the said Carrier-Low Company did deliver to the said Elgin, Joliet and Eastern Railway Company for transportation in interstate commerce, to-wit, from Joliet aforesaid, through the said Eastern Division of the said Northern District of Illinois to Fort Dodge aforesaid over the said railway route and line of transportation, a large quantity, to-wit, 43,000 pounds of paper, wood pulp and strawboard boxes, knocked down flat, packed in 2023 bundles; which said property was transported by the said Elgin, Joliet and Eastern Railway Company and the said Illinois Central Railroad Company, in a car of the Elgin, Joliet and Eastern Railway Company, num-

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bered 7275, from Joliet aforesaid, to Fort Dodge aforesaid over the said railway route and line of transportation, and at Fort Dodge aforesaid, delivered to the Great Western Cereal Company, pursuant to request of said Carrier-Low Company.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said Elgin, Joliet and Eastern Railway Company, unlawfully did knowingly and willfully, falsely classify said paper, wood pulp and strawboard boxes as strawboard, whereby, and by which device, said property was transported in interstate commerce as aforesaid, from Joliet, aforesaid, to Fort Dodge aforesaid, over the said railway route and line of transportation, at a total rate and charge of fifteen cents for each one hundred pounds thereof, instead of twenty-two cents per hundred pounds, the regular rate and charge then established and then in force on the said railway route and line of transportation, for the transportation of the said paper, wood pulp and strawboard boxes, between Joliet, aforesaid, and Fort Dodge aforesaid.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said Elgin, Joliet and Eastern Railway Company, corporation common carrier as aforesaid, and on the thirteenth day of September, in the year of our Lord, nineteen hundred and nine, at Joliet aforesaid, within the said Eastern Division of the said Northern District of Illinois, in manner and form aforesaid, did unlawfully, by means of false classification as aforesaid, knowingly and willfully suffer and permit the said Carrier-Low Company, corporation as aforesaid, to obtain transportation for said property in the interstate commerce aforesaid, between Joliet, Illinois, aforesaid, and Fort Dodge, Iowa, aforesaid, at less than the regular rates then established and then in force on the said railway route and line of transportation aforesaid; against the peace and dignity of the said United States and contrary to the form of the statute of the same in such case made and provided.

EDWIN W. SIMS,
United States Attorney.

Endorsed. No. 4712 United States District Court, Northern District of Illinois Eastern Division. The United States of America *v.* Elgin, Joliet & Eastern Railway Company. Indict-

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ment. Violation Section 10, Act to Regulate Commerce as Amended. A true bill, P. H. Krick, Foreman. Filed in open court this 19th day of April, A. D. 1911. T. C. MacMillan, Clerk.

FORM NO. 21

Order for Summons.

Elgin, J. & E. Ry. Co. v. United States, 253 Fed. 907 (C. C. A. 7th Cir.).

The United States
v.
Elgin, Joliet & Eastern Railway Co.]

Come the parties by their attorneys and on motion of Edwin W. Sims, Esq., United States Attorney, it is ordered by the court that a summons issue to the defendant herein.

FORM NO. 22

Arraignment and Plea of Not Guilty.

Elgin, J. & E. Ry. Co. v. United States, 253 Fed. 907 (C. C. A. 7th Cir.).

The United States
v.
Elgin, Joliet & Eastern Ry. Co.]

Comes the United States by Edwin W. Sims, Esq., United States Attorney, comes also the defendant Elgin, Joliet & Eastern Ry. Co. by its attorney and said defendant being arraigned upon the indictment filed herein against it pleads not guilty thereto.

FORM NO. 23

Order Denying Motion to Withdraw Plea of Not Guilty and for Leave to File Demurrer.

Elgin, J. & E. Ry. Co. v. United States, 253 Fed. 907 (C. C. A. 7th Cir.).

The United States
v.
Elgin, Joliet & Eastern Railway
Company.]

JOINDER IN ISSUE

[FORM 25]

The Court having considered and being now fully advised in the matter of the motion of the defendant for leave of court to withdraw its plea of not guilty heretofore entered herein and to file a demurrer to the indictment it is ordered that said motion be and hereby is overruled and denied.

FORM NO. 24

Order Placing Cause for Trial.

**Elgin, J. & E. Ry. Co. v. United States, 253 Fed. 907 (C. C. A.
7th Cir.).**

The United States
v.
Elgin, Joliet & Eastern Railway
Company. }
Company.

Come the parties by their attorneys and on motion it is ordered that this cause be set for trial on May 8, 1916.

FORM NO. 25

Joinder in Issue.

**Elgin, J. & E. Ry. Co. v. United States, 253 Fed. 907 (C. C. A.
7th Cir.).**

The United States
v.
Elgin, Joliet & Eastern Railway
Company. }
Company.

Come the parties by their attorneys and the defendant by its attorney having heretofore interposed a plea of not guilty to the indictment filed herein against it and this cause now coming on for trial for its defense puts himself upon the country, whereupon the selection of a jury proceeds until the hour of adjournment whereupon it is ordered by the court that the further trial of this cause be continued until tomorrow morning at ten o'clock.

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FORM NO. 26

Impaneling of Jury.

**Elgin, J. & E. Ry. Co. v. United States, 253 Fed. 907 (C. C. A.
7th Cir.).**

The United States
v.
Elgin, Joliet & Eastern Railway
Company.

This being the day and hour to which the further trial of this cause was on yesterday continued come again the parties by their attorneys come also a jury of good and lawful men to wit:—

Thos. O'Connor, H. H. Baum, John K. Andrews, Enoch E. Blanche, Henry Ohl, Elmer Rutherford, Patrick H. McCue, John Fucik, L. H. Tuttle, Paul Mehring, Owen Donnelly and E. A. W. Johnson, who are duly elected, impaneled and sworn herein a true verdict to render according to the law and evidence and the trial of this cause proceeds and during the examination of witnesses the usual hour of adjournment having arrived, it is ordered by the court that the further trial of this cause be continued until tomorrow morning at ten o'clock.

FORM NO. 27

Order of Nolle Prosequi as to Certain Defendants.

**Elgin, J. & E. Ry. Co. v. United States, 253 Fed. 907 (C. C. A.
7th Cir.).**

The United States
v.
Elgin, Joliet & Eastern Railway
Company.

Comes the United States by Chas. F. Clyne, Esq., United States Attorney and declines to further prosecute this suit against said defendant on counts nine to sixteen both inclusive whereupon it is ordered by the court that a nolle prosequi be and hereby is entered herein as to said counts and that the defendant Elgin,

Joliet & Eastern Railway Company go hence without day as to said counts nine to sixteen.

FORM NO. 28

Order of Adjournment.

Elgin, J. & E. Ry. Co. v. United States, 253 Fed. 907 (C. C. A. 7th Cir.).

The United States
v.
Elgin, Joliet & Eastern Railway
Company.

This being the day and hour to which the further trial of this cause was on yesterday continued come again the parties by their attorneys come also the jury who were duly elected, empaneled and sworn herein as aforesaid, and the trial of this cause proceeds and during the examination of witnesses the usual hour of adjournment having arrived it is ordered by the court that the further trial of this cause be continued until tomorrow morning at ten o'clock.

FORM NO. 29

Order Denying Motion to Dismiss at Close of All the Evidence.

Elgin, J. & E. Ry. Co. v. United States, 253 Fed. 907 (C. C. A. 7th Cir.).

The United States
v.
Elgin, Joliet & Eastern Railway
Company.

Comes the defendant at the close of all the evidence and moves the court to instruct the jury to find the defendant not guilty whereupon the court having heard the arguments of counsel and being fully advised in the premises, it is ordered that said motion be overruled and denied to which order of the court the defendant by its attorneys duly excepts.

FORM 30] VIOLATIONS OF INTERSTATE COMMERCE ACT

FORM NO. 30

Verdict and Entry of Motion for New Trial.

Elgin, J. & E. Ry. Co. v. United States, 253 Fed. 907 (C. C. A. 7th Cir.).

The United States
v.
Elgin, Joliet & Eastern Railway
Company.

This being the day and hour to which the further trial of this cause was on May 13, 1916, continued come again the parties by their attorneys come also the jury who were duly elected, empanelled and sworn herein as aforesaid, render the verdict and upon their oath do say "we the jury find the defendant Elgin, Joliet & Eastern Railway Company guilty as charged in the indictment" whereupon the defendant by its attorney enters its motion for a new trial herein.

FORM NO. 31

Order Setting Down Motion for New Trial for Argument.

Elgin, J. & E. Ry. Co. v. United States, 253 Fed. 907 (C. C. A. 7th Cir.).

The United States
v.
Elgin, Joliet & Eastern Ry. Co.

Come the parties by their attorneys and on motion of the defendant the time to file its bill of exceptions herein is extended to June 8, 1916, and it is further ordered that the hearing of the motion for a new trial to be set for June 7, 1916.

FORM NO. 32

Order Taking Cause under Advisement.

Elgin, J. & E. Ry. Co. v. United States, 253 Fed. 907 (C. C. A. 7th Cir.).

The United States
v.
Elgin, Joliet & Eastern Railway
Company.

This cause coming on to be heard on the motion of the defendant for a new trial herein come the parties by their attorneys and the court having heard the arguments of counsel and not being fully advised in the premises, takes the matter under advisement.

FORM NO. 33

Judgment and Sentence.

Elgin, J. & E. Ry. Co. v. United States, 253 Fed. 907 (C. C. A. 7th Cir.).

The United States
v.
Elgin, Joliet & Eastern Railway
Company.

Comes the United States by United States Attorney, comes also the defendant by its attorneys to have the sentence and judgment of the court pronounced upon it, it having heretofore to wit on May 15, A. D. 1916 been adjudged guilty by a jury in due form of law as charged in the indictment filed herein against it, and the defendant being asked by the court if it has anything to say why the sentence and judgment of the Court should not now be pronounced upon it, and showing no good and sufficient reasons why sentence and judgment should not be pronounced it is therefore considered and ordered by the court and is the sentence and judgment of the court upon the verdict of guilty so rendered by the jury as aforesaid that the defendant Elgin, Joliet & Eastern Railway Company forfeit and pay to the United States a fine in the sum of twenty thousand dollars besides the costs in this behalf expended and that execution issue therefor.

Thereupon the defendant by its attorney enters its motion to vacate said judgment and the court having heard the arguments of counsel on said motion and being fully advised in the premises overrules and denies the same to which ruling and order

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of the court the defendant by its attorneys duly excepts and there-upon the defendant enters its motion for a writ of error and is given thirty days in which to file its bill of exceptions.

FORM NO. 34

Order Overruling Motion for New Trial and in Arrest of Judgment.

Elgin, J. & E. Ry. Co. v. United States. 253 Fed. 907 (C. C. A. 7th Cir.).

The United States
v.
Elgin, Joliet & Eastern Railway
Company. }
Complaint.

This cause coming on to be heard on the motion of the defendant for a new trial herein come the parties by their attorneys and the Court having heard the arguments of counsel and being fully advised in the premises overrules and denies said motion to which order of the Court the defendant by its attorneys duly excepts and enters its motion in arrest of judgment and this cause coming on to be heard on said motion in arrest of judgment and the Court having heard the arguments of counsel and being fully advised in the premises overrules said motion in arrest of judgment to which order of the court the said defendant by its attorneys duly excepts.

FORM NO. 35

Charge of the Court.

Elgin, J. & E. Ry. Co. v. United States, 253 Fed. 907 (C. C. A. 7th Cir.).

"Gentlemen of the Jury, in this case the defendant is charged in the indictment with aiding and assisting, suffering and permitting the Carrier-Low Company to obtain transportation of property in Interstate Commerce at less than lawful rates by means of false billing and false classification of the property transported.

"The first four counts in the indictment relate to the car from Joliet to Indianapolis. Counts five to eight, inclusive, relate to

the car from Joliet to Akron, Ohio. Counts nine to sixteen are out of this law suit. And counts seventeen to twenty of the indictment relate to the shipment from Joliet to New Orleans. Counts twenty-one to twenty-four relate to the shipment from Joliet to Fort Dodge.

"The four counts which relate to these several cars respectively charge the offense in four different ways, one being that the defendant railway company knowingly and wilfully by false classification aided the Carrier-Low to obtain the low rate. Another one, that the railway company knowingly and wilfully by false billing aided the Carrier-Low Company to obtain it; one that the railway company by false classification suffered and permitted the Carrier-Low Company to obtain it; and another one, that the Railway Company knowingly and wilfully by false billing suffered and permitted the Carrier-Low Company to obtain it.

"In brief, those are the charges in the indictment. There is no controversy about the transportation in Interstate Commerce of the property from Joliet to the four points mentioned. There is no controversy about its transportation over the railway lines set out in the indictment. There is no controversy as to the rates actually paid for the transportation of the property, and I charge you on the question of the lawful rate in force that should have been applied, that on the shipment from Joliet to Indianapolis it was 9 cents a hundred pounds subject to a minimum weight of 36,000 pounds. The lawful rate in effect and which should have been applied on the shipment from Joliet to Akron was 12 cents a hundred pounds and minimum of 36,000. The lawful rate in effect which should have been applied on the shipment from Joliet to New Orleans was 47 cents a hundred pounds, subject to a minimum of 24,000; and that the lawful rate on the shipment from Joliet to Fort Dodge was 22 cents a hundred pounds.

"So the question of what was the lawful rate is not before you for your consideration. The thing that is before you for your consideration and determination, and the answer to which will end your labors, is the question, Did the defendant know? Stated briefly and concisely, plainly, that is what is left here for your consideration and determination.

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"The indictment charges knowingly and wilfully. The law provides knowingly and wilfully. I charge you that that means nothing more than knowingly. In other words, if the things done by the defendant in and about and in connection with the several transactions resulting in the transportation of the property at rates less than the lawful rates in force were done by the defendant consciously; in other words, to get back, knowingly, then the verdict should be guilty. If the things done by the defendant in connection with the four transactions were done by the defendant without knowledge, unconscious of the fact that the transportation was being afforded at less than the published tariff rates, your verdict will be not guilty. If the things done by the defendant were done by it mistakenly as to the facts; that it did not know the character of stuff that was going forward; that it was led into the honest belief, though erroneous, that the stuff that was going forward was what they were treating it as, your verdict will be not guilty.

"Now, it is the rule that where as in this case there is an inquiry to the knowledge of a party respecting a situation or a subject matter, the rule is that the defendant is chargeable with all knowledge about it that any and all of its agents, officials and employes have about the thing they are dealing with in the line and course of their dealing for the defendant with the subject matter.

"So in this case, in determining the question of what knowledge the defendant had as to the real character of the several shipments, you will consider all the information which the evidence shows all of the defendant's officers, agents and employes had on that subject, and if you find that collectively they all had information which if all in the hands or in the brain of one man would amount to knowledge of the fact of the real character of the shipments that were going forward, and that despite that fact the wrong weight was given to it, your verdict will be guilty.

"Now, there is this qualification: There is evidence here that at one time for a period of time one of the agents or employes of the defendant company was a man named Dunn. The defendant is chargeable with all the information respecting these transactions, the character of the commodity coming from Carrier-Low that Dunn had up to the time of his death, chargeable at

that time with his information, but such information as died with Dunn, such information as he had exclusively and that no other agent or employe or officer of this defendant company had at that time, the defendant is not chargeable with, whether any other agent, employe or officer of the defendant at the same time Dunn had the information also had it, it is for you to say from the evidence whether communicated by him to other officials or agents of the company, you will consider and determine from the evidence but such as he had only, such as when he died, died with him, the defendant in this case when it handled the several transactions set out in this indictment is not chargeable with.

"Now, gentlemen, this is a criminal case. It being a criminal case it is your duty and mine to apply to it two fundamentals of the criminal law. The doctrine of presumption of innocence and the doctrine of reasonable doubt. By presumption of innocence is meant that the accusation against the defendant in this indictment, the arraignment of the defendant under the charge to answer the charge all counts for nothing against the defendant. It means that when you took the oath to try the case that the defendant at that instant stood before you absolutely innocent of any sort of charge, and that that presumption of innocence continues to abide with the defendant as an ample protection and answer against any and all charges unless and until a time comes when this presumption is destroyed gives way,— a situation of such a character that it is inconsistent for you longer to indulge a presumption of the defendant's innocence. Now, what is that situation? It is where the guilt of the defendant of the charge has been established by evidence which shows it beyond all reasonable doubt.

"Now by reasonable doubt is not meant a mere captious doubt. It is not meant a frame of mind that a man may get into in an endeavor to invent or find a way out for somebody accused of crime. It is not an imaginary frame of mind based on something that does not appear in the evidence. A reasonable doubt is that frame of mind because of which the juror if dealing with some matter of importance to himself personally would pause and hesitate before acting. That is a reasonable doubt. And if you are in that frame of mind after consider-

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ing all this case with your brother jurors, then you have got a reasonable doubt and your verdict should be not guilty. On the contrary, if after going over all the evidence you are in a frame of mind where you can say you have an abiding conviction of the defendant's guilt of the charge, where you can say that you are convinced of the defendant's guilt to a moral certainty, then you have no reasonable doubt and your verdict should be guilty.

"Now, there is no magic, gentlemen, about a railroad tariff case. Terms are used in the testimony by witnesses who deal professionally and as specialists with railroad tariffs which in and of themselves at times have a tendency to confuse the average layman. Gentlemen who live under the railway tariff atmosphere, both railway officials and the Interstate Commerce officials, I have thought at times were disposed to rather take a little satisfaction in talking about railroad tariffs as though they were things beyond the ordinary ken to understand. In that respect railway traffic officials and Interstate Commerce officials, I suppose, are human, but don't approach the consideration of this case on the theory that it is mysterious; that it is beyond your reach. Take it up just as you would take up the ordinary case. Give to the question of knowledge, Did the defendant know? Give to a consideration of that question the same common sense judgment and inquiry, discrimination, that you would give to matters of importance to you personally away from here or in your business, or to important matters arising in other kinds of litigations of a criminal character submitted to you for consideration and determination, without the notice in advance that as I said before, this is a terrifically, — a terrifically confused thing for ordinary mortals to attempt to confront.

"Take the evidence, the letters in the case, with all the word of mouth testimony that you have heard from the witness stand, having in mind that the thing for you to determine is, whether at the time the things happened the defendant knew, and when I say the defendant's agents I mean starting in with the creation of the tariff, the filing of the tariff, including everything that agents and officers and employes did in connection with the particular things handled here; the knowledge they gained respecting the character of the shipments going forward in so far as the

evidence shows from their contact with, connection with other shipments from the same consignor, all with a view to determining the question whether when the shipments went forward at the rates indicated instead of at the rates which I have charged you were the lawful rates which should have been paid, the defendant acted mistakenly, whether it was an honest error, or whether what it did was done consciously and with knowledge. It is for you to answer that question. Your answer is the last answer on that question. You take the law as the Judge gives it to you, apply it to the controversy as it has appeared before you, your function being supreme in determining the facts.

"In determining the weight you will give to any witness' testimony, have in mind his interest in the thing he testifies about, his interest in the outcome of this lawsuit, his interest in giving you frankly and fully the truth or his interest in deceiving or misleading you, if such appear, the apparent candor of the witness, the apparent honesty of the witness, the inherent probability, the inherent reasonableness of a witness' statement, or the inherent unreasonableness, the inherent probability or inherent improbability. As I said before, consider the whole case, all the testimony, just as you would consider and treat and decide a matter of grave importance to you at home or in your business."

EXCEPTIONS TO CHARGE

The defendant then and there at the time of the giving of said charge duly excepted to the following portion of said charge:

"I charge you on the question of the lawful rate in force that should have been applied, that on the shipment from Joliet to Indianapolis it was 9 cents a hundred pounds subject to a minimum weight of 36,000 pounds. The lawful rate in effect and which should have been applied on the shipment from Joliet to Akron was 12 cents a hundred pounds and minimum of 36,000 pounds. The lawful rate in effect which should have been applied on the shipment from Joliet to New Orleans was 47 cents a hundred pounds, subject to a minimum of 24,000 pounds, and that the lawful rate on the shipment from Joliet to Fort Dodge was 22 cents a hundred pounds. So the question of what was the lawful rate is not before you for consideration."

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The defendant by its counsel besides excepting to that portion of the court's charge above stated, directed the attention of the Court that the Court by the charge passes upon the classification and the material or commodity contained in the different cars, excluding consideration of what the commodities or contents of the car were.

The defendant then and there at the time of giving said charge duly excepted to the following portion of said charge:

"The four counts which relate to these several cars respectively charge the offense in four different ways, one being that the defendant railway company knowingly and willfully by false classification aided the Carrier-Low Company to obtain it; one that the railway company knowingly and willfully by false billing aided the Carrier-Low Company to obtain it; one that the railway company by false classification suffered and permitted the Carrier-Low Company to obtain it and another one that the Railway Company knowingly and willfully by false billing suffered and permitted the Carrier-Low Company to obtain it," excluding by that part of the charge that it is brought under the act which makes a knowing and willful action necessary to constitute the crime.

The Court: "When I stated the charge here, as Mr. Sheean has just indicated, I intended to communicate to you, as I thought I did later, and include the other element of knowledge. That is to be included in my definition of the charge at the beginning. The charge is that the defendant did these things knowingly, consciously."

The defendant then and there at the same time duly excepted to the following portion of said charge:

"The thing that is before you for your consideration and determination and the answer to which will end your labors is the question, Did the defendant know? Stated briefly and concisely, plainly that is what is left here for your consideration and determination. The indictment charges knowingly and willfully. The law provides knowingly and willfully. I charge you that that means nothing more than knowingly. In other words, if the thing done by the defendant in and about and in connection with the several transactions resulting in the transportation of the property at rates less than the lawful rate in force

were done by the defendant consciously; in other words, to get back, knowingly, then the verdict should be guilty."

The defendant then and there at the time of the giving of said charge duly excepted to the following portion of said charge:

"Now, it is the rule that where as in this case there is an inquiry as to the knowledge of a party respecting a situation or a subject matter, the rule is that the defendant is chargeable with all knowledge about it that any and all of its agents, officials and employes have about the thing they are dealing with in the line and course of their dealing for the defendant upon the subject matter. So in this case, in determining the question of what knowledge the defendant had as to the real character of the several shipments, you will consider all the information which the evidence shows all of the defendant's officers, agents and employes had on that subject, and if you find that collectively they all had information which if all in the hands or in the brain of one man would amount to knowledge of the fact of the real character of the shipments that were going forward, and that despite that fact the wrong weight was given to it, your verdict will be guilty."

The defendant then and there at the time of the giving of said charge duly excepted to the following portion of said charge:

"Now, there is no magic, gentlemen, about a railroad tariff case. Terms are used in the testimony by witnesses who deal professionally and as specialists with railroad tariffs which in and of themselves at times have a tendency to confuse the average layman. Gentlemen who live under the railway tariff atmosphere, both railway officials and the Interstate Commerce officials, I have thought at times were disposed to rather take a little satisfaction in talking about railroad tariffs as though they were things beyond the ordinary ken to understand. In that respect railway traffic officials and Interstate Commerce officials, I suppose, are human, but don't approach the consideration of this case on the theory that it is mysterious; that it is beyond your reach," particularly excepting to that part of the charge in view of the fact that the court in the earlier part of the charge construed the tariffs, their operation and application and therefore no question with reference to tariffs or interpretations under the previous part of the court's charge was before the jury.

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REQUESTS TO CHARGE

Thereupon at the time of and upon entering the exception to the charge of the court to the jury, the defendant by its counsel requested the court to charge the jury that mere negligence or inadvertence or forgetfulness on the part of employes or officers of the defendant does not make the defendant liable in this case. The court refused to so charge or instruct the jury, to which ruling of the court defendant by its counsel then and there duly excepted.

The Court: Gentlemen, you may take the indictment with you. It is not any evidence; it is merely that you may reassure yourselves as to what the charges really are. You may not carry them all in your head, remembering that counts 9 to 16, both inclusive are out of the case.

I give you several forms of verdict from an examination of which you will be able to select the one that will give expression to your answer.

FORM NO. 36

Petition for Writ of Error.

**Elgin, J. & E. Ry. Co. v. United States, 253 Fed. 907 (C. C. A.
7th Cir.).**

United States of America,
Northern District of Illinois, } ss
Eastern Division.

IN THE DISTRICT COURT THEREOF

United States of America,
v.
Elgin, Joliet & Eastern Railway } No. 4712.
Company.

PETITION FOR WRIT OF ERROR

And now comes the defendant herein and says that on the 11th day of November, A. D. 1916, at the October Term of the District Court of the United States for the Northern District

of Illinois, Eastern Division, by the consideration of the said District Court of the United States for the Northern District of Illinois, Eastern Division, in a certain criminal cause depending in said court, to-wit, a certain indictment against the above named defendant, Elgin, Joliet & Eastern Railway Company, for knowingly and willfully falsely billing or falsely classifying certain property shipped by Carrier-Low Company from Joliet, Illinois to various places mentioned in said indictment and thereby knowingly and willfully assisting, suffering or permitting Carrier-Low Company to obtain transportation at less than the regular rates then established and then in force, being criminal cause No. 4712 in that court, the said defendant was adjudged and sentenced to pay a fine of Twenty Thousand Dollars (\$20,000), which said judgment was rendered on the verdict of a jury in said cause against said defendant, in the rendition of which said judgment and sentence and in the record and proceedings in said cause had prior thereto certain manifest errors have intervened to the great prejudice of the said defendant, which errors are specified in detail in the Assignment of Errors filed with this petition.

Wherefore, the said Elgin, Joliet & Eastern Railway Company, the defendant in the above entitled cause, feeling itself aggrieved by the verdict of the jury and the judgment and sentence of the court rendered thereon and entered herein, comes now by Kemper K. Knapp, its attorney, and petitions the court for an order allowing the said defendant to prosecute a writ of error from the Honorable United States Circuit Court of Appeals for the Seventh Circuit under and according to the laws of the United States in that behalf made and provided and for reversal of said judgment and sentence of the District Court of the United States for the Northern District of Illinois, Eastern Division and also that an order be made that upon the serving of said writ of error by lodging a copy thereof for the adverse party, the United States, in the Clerk's Office of the said district court where the record remains, the said writ of error shall operate as a supersedeas and all further proceedings be suspended and stayed until the determination of said writ of error by the United States Circuit Court of Appeals for the Seventh Circuit.

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And the said defendant, Elgin, Joliet & Eastern Railway Company presents herewith its Assignment of Errors in accordance with the rules of the said United States Circuit Court of Appeals and the course and practice of this Honorable Court.

And your petitioner further prays that a citation in due form of law may issue requiring the defendant in error to appear in the United States Circuit Court of Appeals for the Seventh Circuit and then and there make answer to the Assignments of Error made by your petitioner upon the record of the proceedings in said cause. And your petitioner the Elgin, Joliet & Eastern Railway Company will ever pray, etc.

K. K. KNAPP,
KNAPP & CAMPBELL,
Attorneys for Plaintiff in Error.

FORM NO. 37

Assignment of Errors.

Elgin, J. & E. Ry. Co. v. United States, 253 Fed. 907 (C. C. A.
7th Cir.).

United States of America, }
Northern District of Illinois, } ss.
Eastern Division. }

IN THE DISTRICT COURT THEREOF

United States of America,
v.
Elgin, Joliet & Eastern Railway } No. 4712.
Company. }

ASSIGNMENT OF ERRORS

And now comes said Elgin, Joliet & Eastern Railway Company, by its attorneys, and says that in the aforesaid proceedings and in the said judgment there is manifest error in this, to-wit:

1. The District Court erred in overruling and denying and in not granting the motion of the said defendant in arrest of judgment. The indictment and each count thereof fails to state

facts sufficient to show that defendant had violated the law or that it was guilty of the offense which each of said counts mentioned or attempted to state.

2. The District Court erred in each ruling in which it overruled and denied and refused to separately grant the motion of said defendant made in arrest of judgment under each of the counts 1, 2, 3, 4, 5, 6, 7, 8, 17, 18, 19, 20, 21, 22, 23 and 24 for the following reasons:

(a) Each of said counts fails to allege properly or sufficiently that the defendant had done any act which violated the law and particularly fails to allege properly and sufficiently that the defendant had falsely billed or falsely classified the materials referred to in the indictment. Each of said counts fails to set out any false billing or false classification in haec verba or in substance.

(b) Each count fails to state that any tariff or schedule of rates applicable to the shipment in such count mentioned was filed with the Interstate Commerce Commission or was published or promulgated and fails to state the facts necessary to show that any such tariff or schedule of rates was lawfully established and in force at the time the transportation mentioned in such count took place.

(c) Each of said counts shows, if it be assumed that such counts show the existence of any lawful rate at all, that such rate did not apply to the materials which such count alleges were transported in the form or condition as described in such count.

(d) Each of said counts fails to allege the facts sufficient to show that the defendant assisted or suffered or permitted the shipper, Carrier-Low Company to obtain transportation at less than the lawful rate. No facts are stated showing the connection or relation between the act which it is attempted to charge against the defendant and transportation at an unlawful rate.

3. The District Court erred in admitting in evidence over the objection and exception of the defendant the document admitted in evidence as Government Exhibit 1. Said document is headed "Elgin, Joliet & Eastern Ry. Co." and reads in substance. Bill of Lading. Receive, subject to the classification and tariffs in effect on the date of the issue of this Bill of Lading at Joliet, Illinois, 10-1-1909 from Carrier-Low Company the

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property described below in apparent good order except as noted (contents and condition of contents of package unknown), marked, consigned and destined as indicated below, which said company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. Consigned to Gt. Western Cereal Co., destination Akron, State of Ohio. Route B. & O. R. R. Car Initial Southern, Car Number 15,556. Description of Articles and Special marks "Strawboard." Signed Carrier-Low Company, shipper, per John J. Clemons and stamped, "Received at Joliet Station, E. J. & E. Ry. Co., A. M. McCleary, Agent, per, 7 A. M. Oct. 7, 1909."

Said document is a printed form and contains on the back conditions under which the carriage is undertaken in ten sections.

The above contains and quotes the full substance of said document so admitted.

The counts in the indictment relating to the Akron shipment, being counts 5, 6, 7 and 8 each fails to set out the document either in haec verba or in substance, or in any way to describe the same.

4. The District Court erred in admitting in evidence over the objection and exception of the defendant the document admitted in evidence as Government Exhibit 2. Said document is headed "Elgin, Joliet & Eastern Ry. Co." and reads in substance. Shipping order. Receive, subject to the classifications and tariffs in effect on the date of the issue of this Shipping Order, at Joliet, Ill., 10/8, 1909, from Carrier-Low Company the property described below, in apparent good order, except as noted (contents and condition of contents of package unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. Consigned to Vories Baking Co., destination New Orleans, State of La., route Ills. Cent. R. R. Car Initial B. & M. Car number 63,219. Description of Articles and Special Marks "Strawboard." Signed Carrier-Low Company, Shipper, per John J. Clemons, and stamped Elgin, Joliet & Eastern Railway Co., Oct. 10, 1909, Received East Joliet, Ill.

Said document is a printed form and contains on the back conditions under which the carriage is undertaken in ten sections.

The above contains and quotes the full substance of said document so admitted.

The counts in the indictment relating to the New Orleans shipment, being counts 17, 18, 19 and 20 each fails to set out said document either in haec verba or in substance, or in any way to describe the same.

5. The District Court erred in admitting in evidence over the objection and exception of the defendant the document admitted in evidence as Government Exhibit 3. Said document is headed, "Elgin, Joliet & Eastern Ry. Co." and reads in substance. Shipping order. Receive, subject to the classifications and tariffs in effect on the date of this Shipping Order, at Joliet, Ills. 9/13, 1909, from Carrier-Low Co., the property described below, in apparent good order, except as noted, (contents and condition of contents of package unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. Consigned to Gt. Western Cereal Co., destination, Ft. Dodge, State of Iowa. Route c/o I. C. c/o M. & St. L. Car Initial EJ&E. Car No. 7275. Description of Articles and Special Marks, "Strawboard." Signed Carrier-Low Co., Shipper, per John J. Clemons.

Said document is a printed form and contains on the back conditions under which the carriage is undertaken in ten sections.

The above contains and quotes the full substance of said document so admitted.

The counts in the indictment relating to the Fort Dodge shipment, being counts 21, 22, 23 and 24 each fails to set out said document either in haec verba or in substance or in any way to describe the same.

6. The District Court erred in admitting in evidence over the objection and exception of the defendant the document admitted in evidence as Government Exhibit 4. Said document is headed "Elgin, Joliet & Eastern Ry. Co." and reads in substance. Shipping Order. Receive, subject to the classifications and tariffs

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in effect on the date of this Shipping Order, at Joliet, Ill. Dec. 3, 1909, from Carrier-Low Company the property described below, in apparent good order, except as noted (contents and condition of contents of package unknown), marked, consigned and destined as indicated below, which said company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. Consigned to National Starch Co., Destination Indianapolis, State of Indiana. Route EJ&E c/o Monon. Car Initial C. R. I. & M., Car No. 350,154, description of articles and special marks, "Strawboard." Signed, Carrier-Low Company, Shipper per J. D., and stamped, Elgin, Joliet & Eastern Railway Co., Dec. 4, 1909, Received East Joliet, Ill.

Said document is a printed form and contains on the back conditions under which the carriage is undertaken in ten sections.

The above contains and quotes the full substance of said document so admitted.

The counts in the indictment relating to the Indianapolis shipment, being counts 1, 2, 3 and 4 each fails to set out said document, either in haec verba or in substance, or in any way to describe the same.

7. The District Court erred in admitting in evidence over the objection and exception of the defendant the document admitted in evidence as Government Exhibit 5. Said document is a way bill and is in substance, Elgin, Joliet & Eastern Railway Company. From Joliet, Ill. to Indianapolis, Ind. Date Dec. 10, 1909. Car Initial C. R. I & M. Car No. 350154. Series I. No. 1319. Route via junction Dyer, via junction Monon. Consignor, Carrier-Low Co. Marks, consignee and destination, Nat'l Starch Co., Indianapolis, Ind. Articles and classification, "Strawboard." Weight 56,600 pounds. Rate 7 $\frac{1}{2}$. Freight charges 42.45.

The above contains and quotes the full substance of said document so admitted in evidence. The counts in the indictment relating to the Indianapolis shipment, being counts 1, 2, 3 and 4, each fails to set out said document either in haec verba or in substance or in any way to describe the same.

8. The District Court erred in admitting in evidence over the

objection and exception of the defendant the document admitted in evidence as Government Exhibit 6. Said document is a way bill and is in substance. Elgin, Joliet & Eastern Railway Company. From Joliet Ill. to New Orleans, La. Date Oct. 11, 1909. Car Initialed B.&M. Car No. 63219. Series I. No. 1473. Route via junction Matt, via junction Ill. Cent. Consignor, C. Low. Co. Marks, consignee and destination, Vories Baking Co., New Orleans, La. Articles and classification, "Strawboard." Weight 40,600 pounds. Rate 31. Freight charges 125.86.

The above contains and quotes the full substance of said document so admitted in evidence.

The counts in the indictment relating to the New Orleans shipment, being counts 17, 18, 19 and 20 each fails to set out said document either in haec verba or in substance or in any way to describe the same.

9. The District Court erred in admitting in evidence over the objection and exception of the defendant the document admitted in evidence as Government Exhibit 7. Said document is a way bill and is in substance, Elgin, Joliet & Eastern Railway Company. From Joliet, Ill. to Akron, Ohio. Date Oct. 9, 1907. Car Initial Sou. Car No. 15,556. Series I. No. 1270. Route via junction McCool, via junction B. O. Consignor, Carrier-Low Co. Marks, consignee and destination, Gt. Western Cereal Co., Akron, Ohio. Articles and classification, "Strawboard." Weight 35,650 pounds. Rate 10. Freight charges 35.65.

The above contains and quotes the full substance of said document so admitted in evidence.

The counts in the indictment relating to the Akron, Ohio, shipment, being counts 5, 6, 7 and 8, each fails to set out said document either in haec verba or in substance or in any way to describe the same.

10. The District Court erred in admitting in evidence over the objection and exception of the defendant the document admitted in evidence as Government Exhibit 8. Said document is a way bill, and is in substance, Elgin, Joliet & Eastern Railway Company. From Joliet, Ill. to Ft. Dodge, Iowa. Date Sept. 15, 190... Car Initial EJ&E. Car No. 7275. Series

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C. S. No. 1788. Route via junction Munger, via junction Ill. Cent. Consignor, Carrier-Low Co. Marks, consignee and destination, Gt. Western Cereal Co., Ft. Dodge, Ia. Articles and classification, strawboard. Weight 43,000 pounds. Rate 15. Freight charges 64.50.

The above contains and quotes the full substance of said document so admitted in evidence.

The counts in the indictment relating to the Ft. Dodge, Iowa shipment, being counts 21, 22, 23 and 24 each fails to set out said document either in haec verba or in substance or in any way to describe the same.

11. The District Court erred in admitting in evidence over the objection and exception of the defendant Government Exhibit 55. Said Government Exhibit 55 is a certificate by the Secretary of the Interstate Commerce Commission certifying "that the papers attached hereto (consisting of 12 typewritten and 3 photostat sheets) contain true and correct extracts from the schedules therein more particularly described; said schedules having been filed with said Interstate Commerce Commission on dates specified in said papers and said extracts therefrom having been in force on dates indicated in said papers." The extracts contained in said papers attached to said certificate include the following:

Page 42

Boxes —

29	Paper or wood pulp	
	S. U. (see note) :	
	Crated or Boxed :	
	Not nested	
	Nested	
	Min. weight 10,000 lbs. (subject to Rule 27)	2
	In bundles, min. weight 10,000 lbs. (subject to Rule 27)	1
	Note — L. C. L. shipments not crated or boxed, not taken	
	K. D. flat, in bundles, crates or boxes. (C L. min. weight 36,000 lbs.)	5

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Boxes —	
1 Strawboard, corrugated, K. D. flat, in bundles, crates or boxes (C. L. min. weight 24,000 lbs.)	
6 (Subject to Rule 27)	5
Boxes, paper, K. D. flat in bundles crates or boxes, C. L.	Sixth Class
3 Commodity rates: Whenever a commodity rate is established it removes the application of the class rates between the same points on that commodity.	

Page 40

Governed by Official Classification except as otherwise provided for herein.	: In Cents per 100 lbs.
Item :	: From
No. :	: and stations taken
:	: same rates, as shown
:	: on pages 15 to 18
:	: inc
31 : In carloads	<hr/> : To : Indianapolis, Ind.
31 : Boxes, paper K. D. flat, in bundles, boxes or crates, C. L. (Rule 27, Official Classification not to apply) 9

Said extracts further purport to show that K. D. means knocked down; that the 5th class rate from Joliet to Indianapolis is 11½c; that the 6th class rate from Joliet to Indianapolis is 9c; that the rates named in said extracts on the articles named in said extracts should apply from Joliet, Illinois to Indianapolis, Indiana, over the Elgin, Joliet & Eastern Railway and the Chicago, Indianapolis & Louisville Railway, on the dates named in said extracts and which dates were prior to December 10, 1909.

The above contains and quotes the full substance of said document so admitted.

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(a) The indictment does not allege that any rate schedule covering the transaction in question had been filed with the Interstate Commerce Commission.

(b) The indictment does not allege that there had been filed any rate schedule or that there was any rate in existence covering strawboard. So far as the document in question relates to a rate upon strawboard it was inadmissible for lack of a proper allegation in the indictment.

(c) The document is irrelevant and variant in that it does not relate to the same material as the indictment alleges was transported, or to such material in the same form or condition as the indictment alleges was transported.

(d) The tariff offered is irrelevant and variant, because it does not cover the same materials in the same form or condition as the tariff referred to in the indictment covers.

(e) The certificate of the Secretary of the Interstate Commerce Commission in so far as he attempts to certify that the rate schedules in question were in force is incompetent, beyond his authority and unlawful.

(f) The document is irrelevant and variant because the tariff schedules referred to in the indictment is alleged to apply to mixed carloads of paper, wood pulp and strawboard boxes. The tariff offered is on paper boxes alone.

12. The District Court erred in admitting in evidence over the objection and exception of the defendant Government Exhibit 56. Said Government Exhibit 56 is a certificate by the Secretary of the Interstate Commerce Commission certifying "that the papers hereto attached (consisting of seven type-written sheets and one photostat copy of page) contain true and correct extracts from the schedules therein more particularly described. Said schedules having been filed with the said Interstate Commerce Commission on the dates specified in said papers and said extracts therefrom having been in force on October 7th, 1909 and October 9th, 1909." The extracts contained in said papers attached to said certificate include the following:

Pages 42, 43 & 172:

Subject to
Uniform Bill of
Lading Conditions.
C. L.

Boxes —**29 Paper or wood-pulp :**

S. U. (See Note) :

Crated or boxed :

Not nested

Nested

Min. weight 10,000 lbs. (subject to Rule 27) 2

In bundles, min. weight 10,000 lbs. (subject to
Rule 27) 1Note. L. C. L. Shipments not crated or
boxed, not taken.K. D. flat, in bundles, crates or boxes (C. L., min.
weight 36,000 lbs.) 51 Strawboard, corrugated, K. D. flat, in bundles, crates or
boxes (C. L. min. weight 24,000 lbs.) (subject to Rule
27) 5

25 Strawboard

27 N. O. S. :

Corrugated or indented, in packages (C. L. min.
weight 24,000 lbs.) (subject to Rule 27) 5Other than corrugated or indented (C. L. min.
weight 36,000 lbs.) 5

(The following by provisions shown in said extracts takes precedence, as to the same items, over the above.)

Boxes, paper K. D. flat in bundles, crates or boxes, C. L. 6th class rates.

Said extracts further show that 6th class rate is 12c per 100 pounds. The substance of the other extracts contained in said papers attached purport to show that the rates named in said extracts on the articles named in said extracts should apply from Joliet, Illinois to Akron, Ohio over the Elgin, Joliet & Eastern

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Railway and the Baltimore & Ohio Railroad on the dates named in said extracts and which said dates were prior to October 8th, 1909.

The above contains and quotes the full substance of said document so admitted.

(a) The indictment does not allege that any rate schedule covering the transaction in question had been filed with the Interstate Commerce Commission.

(b) The indictment does not allege that there had been filed any rate schedule or that there was any rate in existence covering strawboard. So far as the document in question relates to a rate upon strawboard, it was inadmissible for lack of a proper allegation in the indictment.

(c) The indictment alleged that the rate on paper boxes, etc., if it alleged any rate, was 15c per 100 pounds, whereas the tariff offered showed that it was 12c per 100 pounds.

(d) The document is irrelevant and variant["] in that it does not relate to the same material as the indictment alleges was transported, or to such material in the same form or condition as the indictment alleges was transported.

(e) The tariff offered is irrelevant and variant because it does not cover the same materials in the same form as the tariff referred to in the indictment covers.

(f) The certificate of the Secretary of the Interstate Commerce Commission in so far as he attempts to certify that the rate schedules in question were in force is incompetent, beyond his authority and unlawful.

13. The District Court erred in admitting in evidence over the objection and exception of the defendant Government Exhibit 57. Said Government Exhibit 57 is a certificate by the Secretary of the Interstate Commerce Commission certifying "that the papers hereto attached, (consisting of five typewritten sheets) contain true and correct extracts from the schedules therein more particularly described; said schedules having been filed with the said Interstate Commerce Commission on dates specified in said papers and the said extracts therefrom having been in force on October 10th, 1909 and October 11th, 1909." The extracts contained in said papers attached to said certificate include the following:

(Here follows a description of the items admitted.)

Said extracts further show that 5th class rate amounts to 47c and A class rate amounts to 31c.

Said extracts further purport to show that the rates named in said extracts on the articles named in said extracts should apply from Joliet, Illinois to New Orleans, La., over the Elgin, Joliet & Eastern Railway and the Illinois Central Railroad on the dates shown in said extracts, and which said dates were prior to October 9th, 1909.

The above contains and quotes the full substance of said document so admitted.

(a) The indictment does not allege that any rate schedule covering the transaction in question had been filed with the Interstate Commerce Commission.

(b) The indictment does not allege that there had been filed any rate schedule, or that there was any rate in existence covering strawboard. So far as the document in question relates to a rate upon strawboard, it was inadmissible for lack of a proper allegation in the indictment.

(c) The document is irrelevant and variant in that it does not relate to the same material as the indictment alleges was transported or to such material in the same form or condition as the indictment alleges was transported.

(d) The tariff offered is irrelevant and variant because it does not cover the same materials in the same form as the tariff referred to in the indictment covers.

(e) The certificate of the Secretary of the Interstate Commerce Commission in so far as he attempts to certify that the rate schedule in question were in force is incompetent, beyond his authority and unlawful.

(f) The document is irrelevant and variant because the tariff schedule referred to in the indictment is alleged to apply to mixed carloads of paper, wood pulp and strawboard boxes. The tariff offered is on paper boxes alone.

14. The District Court erred in admitting in evidence over the objection and exception of the defendant Government Exhibit 58. Said Government Exhibit 58 is a certificate by the Secretary of the Interstate Commerce Commission certifying "that the

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papers hereto attached (consisting of 11 typewritten sheets) contain true and correct extracts from the schedules therein more particularly described; said schedules having been filed with the said Interstate Commerce Commission on dates specified in said papers, and the said extracts therefrom having been in force on the dates indicated in said papers." The extracts contained in said papers attached to said certificate include the following:

(Here follows a description of the items admitted.)

Said extracts contained in said papers attached further purport to show that the rates named in said extracts on the articles named in said extracts should apply from Joliet, Illinois to Fort Dodge, Iowa over the Elgin, Joliet & Eastern Railway and the Illinois Central Railroad on the dates mentioned in said extracts and which said dates were prior to September 15th, 1909.

The above contains and quotes the full substance of said document so admitted.

(a) The indictment does not allege that any rate schedule covering the transaction in question had been filed with the Interstate Commerce Commission.

(b) The indictment does not allege that there had been filed any rate schedule or that there was any rate in existence covering strawboard. So far as the document in question relates to a rate upon strawboard it was inadmissible for lack of a proper allegation in the indictment.

(c) The document is irrelevant and variant in that it does not relate to the same material as the indictment alleges was transported or to such material in the same form or condition as the indictment alleges was transported.

(d) The tariff offered is irrelevant and variant because it does not cover the same materials in the same form as the tariff referred to in the indictment covers.

(e) The tariff offered is irrelevant and variant because it purports to cover corrugated strawboard or wood pulp board boxes, cartons, etc. The articles transported were not corrugated.

(f) The rate alleged, if any rate is alleged in the indictment, was a different rate than the rate which the said document purported to show covering the articles transported.

(g) The certificate of the Secretary of the Interstate Com-

merce Commission in so far as he attempts to certify that the rate schedules in question were in force is incompetent, beyond his authority and unlawful.

(h) The document is irrelevant and variant because the tariff schedule referred to in the indictment is alleged to apply to mixed carloads of paper, wood pulp and strawboard boxes. The tariff offered does not cover such mixed carloads or if it does purports to show a rate different than that alleged in the indictment.

15. The District Court erred in overruling and in not granting motion of the defendant to instruct the jury to find the defendant not guilty on all the counts of the indictment remaining in the case, viz. 1, 2, 3, 4, 5, 6, 7, 8, 17, 18, 19, 20, 21, 22, 23 and 24.

The evidence in the case failed to show the publishing or promulgation of any rate for the transportation of the property described in each count between the places described in each count in the indictment and failed to show that any such rate on such articles for transportation between such places was lawfully established or lawfully in force.

The evidence showed that the defendant did not collect the freight for the transportation of the articles described in each count of the indictment between the places described in each count of the indictment, and failed to show that the defendant either falsely billed or falsely classified any of such articles or did any other act or thing which came to the attention or knowledge of the company which collected said freight, or of the officer or agent of the company who collected such freight, or in any way influenced the collection of an unlawful rate.

The evidence showed that the defendant did not collect the freight for the transportation of the articles described in each count of the indictment and showed that Carrier-Low Company did not pay such freight and did not obtain the transportation at less than the regular rates established and in force (if there was any such rate) at the time of the transportation described in each of said counts.

16. The District Court erred in overruling the motion and in refusing to grant the motion of the defendant that the court instruct the jury separately as to each of the counts 1, 2, 3 and 4 to find the defendant not guilty as to each of said counts.

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For the reasons stated in assignment of error No. 15.

Also for the reason that each of the counts 1, 2, 3 and 4 of the indictment, if it alleges any tariff alleges a tariff on paper, wood pulp and strawboard boxes knocked down flat in carload lots. The Government failed to introduce any tariff under that allegation.

There is a variance between the tariff introduced by the Government and the allegation of the indictment.

Each of the said counts 1, 2, 3 and 4 of the indictment allege that there was transported a large quantity, to-wit, 56,600 pounds of paper, wood pulp and strawboard boxes packed in 3996 bundles. The evidence of the Government is to the effect that there was only paper boxes in the car.

The tariff which the Government alleges in each of said counts 1, 2, 3 and 4, if it alleges any tariff, shows a tariff rate of 9c per 100 pounds. The evidence shows that the tariff rate, if it showed any tariff rate on paper, wood pulp and strawboard boxes altogether in one car was not 9c but 11½c per 100 pounds.

17. The District Court erred in overruling the motion and in refusing to grant to motion of the defendant that the court instruct the jury separately as to each of the counts 5, 6, 7 and 8 to find the defendant not guilty as to each of said counts.

For the reasons stated in assignment of error No. 15.

Also for the reason that each of said counts 5, 6, 7 and 8 of the indictment, if it alleges any tariff, alleges a tariff on paper, wood pulp and strawboard boxes knocked down flat in carload lots. The Government failed to introduce any tariff under that allegation.

There is a variance between the tariff introduced by the Government and the allegation of the indictment.

Each of said counts 5, 6, 7 and 8 of the indictment alleges that there was transported a large quantity, to-wit, 36,650 pounds of paper, wood pulp and strawboard boxes knocked down flat packed in 1409 bundles. The evidence of the Government is to the effect that there was only paper boxes in the car.

The tariff which the government alleges in each of said counts 5, 6, 7 and 8, if it alleges any tariff, shows a tariff rate of 15c per 100 pounds. The evidence, if it shows any tariff rate, shows

that the tariff rate on paper boxes was not 15c, but 12c per 100 pounds.

18. The District Court erred in overruling the motion and in refusing to grant the motion of the defendant that the court instruct the jury separately as to each of the counts 17, 18, 19 and 20 to find the defendant not guilty as to each of said counts.

For the reasons stated in assignment of error No. 15.

Also for the reason that each of said counts 17, 18, 19 and 20 of the indictment, if it alleges any tariff, alleges a tariff on paper, wood pulp and strawboard boxes knocked down flat in carload lots. The Government failed to introduce any tariff under that allegation.

There is a variance between the tariff introduced by the Government and the allegation of the indictment.

Each of said counts 17, 18, 19 and 20 of the indictment allege that there was transported a large quantity, to-wit, 40,600 pounds of paper, wood pulp and strawboard boxes knocked down flat packed in 875 bundles. The evidence of the Government is to the effect that there was only paper boxes in the car.

The tariff which the government alleges in each of said counts 17, 18, 19 and 20, if it alleges any tariff, shows a tariff rate of 47c per 100 pounds. The evidence, if it shows any tariff rate, shows that the tariff rate on paper, wood pulp and strawboard boxes, altogether in one car would be less than the carload rate, a different rate than that alleged and with a minimum of 24,000 pounds, applicable to each case.

19. The District Court erred in overruling the motion and in refusing to grant the motion of the defendant that the court instruct the jury separately as to each of the counts 21, 22, 23 and 24 to find the defendant not guilty as to each of said counts.

For the reasons stated in assignment of error No. 15.

Also for the reason that each of said counts 21, 22, 23 and 24 of the indictment, if it alleges any tariff alleges a tariff on paper, wood pulp and strawboard boxes knocked down flat in carload lots. The Government failed to introduce any tariff under that allegation.

There is a variance between the tariff introduced by the Government and the allegation of the indictment.

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Each of said counts 21, 22, 23 and 24 of the indictment allege that there was transported a large quantity, to-wit, 43,000 pounds of paper, wood pulp and strawboard boxes knocked down flat packed in 2023 bundles. The evidence of the Government is to the effect that there was only paper boxes in the car.

The tariff which the Government alleges in each of said counts 21, 22, 23 and 24, if it alleges any tariff, shows a tariff rate of 22c per 100 pounds. The evidence, if it shows any tariff, shows that the tariff rate on paper, wood pulp and strawboard boxes altogether was not 22c but 30c per 100 pounds.

The tariff which the Government alleges in said counts 21, 22, 23 and 24, if it alleges any tariff rate, is the rate of 22c per 100 pounds. The document introduced in evidence is not applicable to the materials alleged in said counts 21, 22, 23 and 24 to have been shipped in the car and is not applicable to the articles which the evidence showed were shipped in the car. The evidence, if it shows any tariff, shows that the rate on the articles shipped in said car and the articles alleged in the said counts 21, 22, 23 and 24 to have been shipped in the car was 30c and not 22c per 100 pounds.

20. The District Court erred in overruling and in denying the motion of the defendant that the Government be ruled to elect upon which one of counts 1, 2, 3 and 4, being the counts referring to the Indianapolis shipment it will proceed under.

For that each one of said counts relates to the same transaction.

21. The District Court erred in overruling and in denying the motion of the defendant that the Government be ruled to elect upon which one of counts 5, 6, 7 and 8, being the counts referring to the Akron shipment it will proceed under.

For that each one of said counts relates to the same transaction.

22. The District Court erred in overruling and in denying the motion of the defendant that the Government be ruled to elect upon which one of counts 17, 18, 19 and 20, being the counts referring to the New Orleans shipment it will proceed under.

For that each one of said counts relates to the same transaction.

23. The District Court erred in overruling and in denying the motion of the defendant that the Government be ruled to elect upon which one of counts 21, 22, 23 and 24, being the counts referring to the Fort Dodge shipment it will proceed under.

For that each one of said counts relates to the same transaction.

24. The District Court erred in overruling and in denying the motion of the defendant that the Government be ruled to elect to proceed on one count with reference to each shipment and not on more than one count.

25. The District Court erred in refusing to give to the jury the following instruction asked for by the defendant:

"The jury are instructed that if they believe from the evidence that M. J. Dunn was agent for the defendant at Joliet previous to 1909, but that he died previous to 1909, then the defendant in this case cannot be held to have known any fact during the year 1909 merely because such fact was known to the said Dunn prior to his death."

26. The District Court erred in refusing to give to the jury the following instruction asked for by the defendant:

"The jury are instructed that they should find the defendant not guilty under each count in the indictment unless they believe from the evidence beyond a reasonable doubt that the defendant at the time it billed or classified the articles in the car mentioned in such count knew (1) that it did not bill or classify the same correctly; (2) and also that it purposely, consciously and intentionally billed or classified such material falsely; (3) and also that it knew that such false billing or classification would assist or suffer or permit Carrier-Low Company to obtain the transportation of such articles at less than the lawful rate; (4) and also that it consciously and purposely intended by such false billing or false classification to assist or suffer or permit Carrier-Low Company to obtain transportation of such articles at less than the lawful rate."

27. The District Court erred in refusing to give to the jury the following instruction asked for by the defendant:

"The jury are instructed that the law presumes that the defendant in this case is innocent until it has been proven guilty beyond a reasonable doubt. The burden is upon the Government to make this proof and if the evidence in this case is as consistent with innocence as with guilt, the jury should find the defendant not guilty. Unless the jury believe from the evidence

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that every hypothesis but that of guilt has been excluded by the evidence, the jury should find the defendant not guilty. Mere negligence or inadvertence or forgetfulness on the part of the employes or officers of the defendant does not make the defendant guilty of the charge in the indictment. Before the defendant can be found guilty it is necessary that the jury should believe from the evidence, beyond a reasonable doubt, that it knowingly and willfully, that is to say, consciously, purposely and intentionally did the things which are charged against it."

28. The District Court erred in giving to the jury that portion of the charge of the Court given to the jury which is as follows:

"I charge you on the question of the lawful rate in force that should have been applied, that on the shipment from Joliet to Indianapolis it was 9 cents a hundred pounds subject to a minimum weight of 36,000 pounds. The lawful rate in effect and which should have been applied on the shipment from Joliet to Akron was 12 cents a hundred pounds and minimum of 36,000 pounds. The lawful rate in effect which should have been applied on the shipment from Joliet to New Orleans was 47 cents a hundred pounds, subject to a minimum of 24,000 pounds, and that the lawful rate on the shipment from Joliet to Fort Dodge was 22 cents a hundred pounds. So the question of what was the lawful rate is not before you for consideration."

(a) For that the evidence failed to establish that any tariff schedule was published or promulgated covering the shipment to Indianapolis.

(b) For that the evidence failed to establish that any tariff schedule was published or promulgated covering the shipment to Akron.

(c) For that the evidence failed to establish that any tariff schedule was published or promulgated covering the shipment to New Orleans.

(d) For that the evidence failed to establish that any tariff schedule was published or promulgated covering the shipment to Fort Dodge.

(e) For that the extracts of the tariff schedules admitted in evidence do not purport to fix a rate of 9c per 100 pounds subject

to a minimum weight of 36,000 pounds on the Indianapolis shipment, (1) as made or (2) as alleged in the indictment.

(f) For that the extracts of the tariff schedules admitted in evidence do not purport to fix a rate of 12c per 100 pounds subject to a minimum weight of 36,000 pounds on the Akron shipment, (1) as made or (2) as alleged in the indictment.

(g) For that the extracts of the tariff schedules admitted in evidence do not purport to fix a rate of 47c per 100 pounds subject to a minimum of 24,000 pounds on the New Orleans shipment, (1) as made or (2) as alleged in the indictment.

(h) For that the extracts of the tariff schedules admitted in evidence do not purport to fix a rate of 22c per 100 pounds in the Fort Dodge shipment, (1) as made or (2) as alleged in the indictment.

(i) For that the court in giving said instruction assumed to pass upon the question of fact as to what was the proper description or classification of the articles which the evidence showed were transported in each of the several shipments to Indianapolis, Akron, New Orleans and Fort Dodge.

29. The District Court erred in giving to the jury that portion of the charge of the Court given to the jury, which is as follows:

"The four counts which relate to these several cars respectively charge the offense in four different ways, one being that the defendant railway company knowingly and willfully by false classification aided the Carrier-Low to obtain the low rate; another one that the railway company knowingly and willfully by false billing aided the Carrier-Low Company to obtain it; one that the Railway Company by false classification suffered and permitted the Carrier-Low Company to obtain it; and another one that the Railway Company knowingly and willfully by false billing suffered and permitted the Carrier-Low Company to obtain it."

For that each count of the indictment charged that the defendant not only knowingly and willfully falsely billed or falsely classified, but also charged that the defendant thereby knowingly and willfully assisted or suffered and permitted Carrier-Low Company to obtain the transportation at less than the regular rates then established and then in force.

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The said instruction omits the element of knowingly and willfully assisting or suffering and permitting.

30. The District Court erred in giving to the jury that portion of the charge of the Court given to the jury, which is as follows:

"The thing that is before you for your consideration and determination and the answer to which will end your labors is the question, Did the defendant know? Stated briefly and concisely, plainly that is what is left here for your consideration and determination. The indictment charges knowingly and willfully. The law provides knowingly and willfully. I charge you that that means nothing more than knowingly. In other words, if the thing done by the defendant in and about and in connection with the several transactions resulting in the transportation of the property at rates less than the lawful rate in force were done by the defendant consciously; in other words, to get back, knowingly, then the verdict should be guilty."

(a) For that under the law and under the indictment the defendant could not be held guilty unless the evidence showed beyond a reasonable doubt that the defendant not only knowingly and willfully billed or classified the articles transported but also knew that those acts would result in the transportation at less than the regular rate then established and then in force.

(b) For that under the law and the indictment a charge that the defendant did certain things knowingly and willfully is not equivalent to a charge that such things were done merely knowingly or consciously. Such a charge involves purpose and intent to accomplish the result charged, which result is the alleged offense.

31. The District Court erred in giving to the jury that portion of the charge of the Court given to the jury, which is as follows:

"Now, it is the rule that whereas in this case there is an inquiry as to the knowledge of a party respecting a situation or a subject matter, the rule is that the defendant is chargeable with all knowledge about it that any and all of its agents, officials and employes have about the thing they are dealing within the line and course of their dealing for the defendant upon the subject matter. So in this case, in determining the question of what knowledge the defendant had as to the real character of the several shipments, you will consider all the information which the evidence

shows all of the defendant's officers, agents and employes had on that subject, and if you find that collectively they all had information which if all in the hands or in the brain of one man would amount to knowledge of the fact of the real character of the shipments that were going forward, and that despite that fact the wrong weight was given to it, your verdict will be guilty."

(a) For that such is not a correct statement of the law. In order that notice or knowledge of the agent may be binding upon the principal it is necessary that it should be of some fact material to the transaction in which he is employed. The test whether knowledge acquired by an agent is notice to his principal is whether or not the knowledge was such that it was the agent's duty to disclose it to his principal. The knowledge must be such as would reasonably charge the agent on failure to repeat with breach of faith as a duty to his employer.

32. The District Court erred in giving to the jury that portion of the charge of the Court given to the jury, which is as follows:

"Now, there is no magic, gentlemen, about a railroad tariff case. Terms are used in the testimony by witnesses who deal professionally and as specialists with railroad tariffs which in and of themselves at times have a tendency to confuse the average layman. Gentlemen who live under the railway tariff atmosphere, both railway officials and the Interstate Commerce officials, I have thought at times were disposed to rather take a little satisfaction in talking about railroad tariffs as though they were things beyond the ordinary ken to understand. In that respect railway traffic officials and interstate Commerce officials, I suppose, are human, but don't approach the consideration of this case on the theory that it is mysterious; that it is beyond your reach."

For that the same is not called for or justified by the evidence.

33. The District Court erred in refusing to give an instruction to the jury at the request of the defendant that mere negligence or inadvertence or forgetfulness on the part of the employes or officers of the defendant would not make the defendant liable in this case.

34. The District Court erred in entering said judgment and imposing sentence upon said verdict of guilty in the manner and form as done.

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35. The District Court erred in entering judgment and imposing sentence upon said verdict of guilty on more than one count relating to each shipment referred to in the counts of the indictment submitted to the jury.

36. The District Court erred in pronouncing judgment upon said verdict.

37. The District Court erred in refusing to set aside and vacate said judgment.

Wherefore, the said Elgin, Joliet & Eastern Railway Company prays that the aforesaid judgment may be reversed, etc.

K. K. KNAPP

KNAPP & CAMPBELL

*Attorneys for Defendant and Plaintiff
in Error.*

FORM NO. 38

Order for Writ of Error and Supersedeas.

Elgin, J. & E. Ry. Co. v. United States, 253 Fed. 907 (C. C. A.
7th Cir.).

The United States of America |
v.
Elgin, Joliet & Eastern Railway |
Company. |

And now on this 8th day of February, 1917, comes the Elgin, Joliet & Eastern Railway Company, defendant in the above entitled cause and presents to the court its Petition for a Writ of Error from the United States Circuit Court of Appeals for the Seventh Circuit to the United States District Court for the Northern District of Illinois, Eastern Division and certain assignments of error attached to said petition, and moves the court to grant the prayer of said petition and to allow a writ of error as prayed for.

It is Ordered by the court that said writ of error be and it is hereby allowed and that said Writ of Error shall operate as a supersedeas and that no further proceedings shall be had in this cause in this court until the final determination thereof in the said

United States Circuit Court of Appeals upon the filing and the approval by the court of a bond in the penal sum of twenty-five thousand dollars, with surety thereon.

FORM NO. 39

Supersedeas Bond.

Elgin, J. & E. Ry. Co. v. United States, 253 Fed. 907 (C. C. A. 7th Cir.).

Know All Men by these Presents, That we, Elgin, Joliet and Eastern Railway Company, as principal, and United States Fidelity and Guaranty Company, as sureties, are held and firmly bound unto the United States of America in the full and just sum of Twenty-five Thousand Dollars (\$25,000) to be paid to the said United States of America, to which payment, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents. Sealed with our seals and dated this 8th day of February in the year of our Lord one thousand nine hundred and Seventeen.

Whereas, lately at a session of the District Court of the United States for the Northern District of Illinois, Eastern Division in a suit pending in said Court, between United States of America, plaintiff, and Elgin, Joliet and Eastern Railway Company, defendant, a judgment was rendered against the said Elgin, Joliet and Eastern Railway Company on the 11th day of November, 1916, in the sum of Twenty Thousand Dollars and costs and the said Elgin, Joliet and Eastern Railway Company having obtained from said Court a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said United States of America citing and admonishing it to be and appear at the United States Circuit Court of Appeals for the Seventh Circuit, to be holden at Chicago within thirty days from the date hereof.

Now, the condition of the above obligation is such, That if the said Elgin, Joliet and Eastern Railway Company shall prosecute its writ to effect, and shall answer all damages and costs that may be awarded against it if it fail to make its plea good,

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then the above obligation to be void; otherwise to remain in full force and virtue.

(Seal)

ELGIN JOLIET AND EASTERN RAILWAY

COMPANY (Seal)

by S M ROGERS, (Seal)

Vice President

UNITED STATES FIDELITY AND GUAR-

ANTY Co. (Seal)

by KENNETH H. WOOD (Seal)

Attorney in fact

FORM NO. 40

Writ of Error.

Elgin, J. & E. Ry. Co. v. United States, 253 Fed. 907 (C. C. A. 7th Cir.).

United States } ss.
of America, }

The President of the United States, To the Honorable the Judges of the District Court of the United States, for the Northern District of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you, or some of you, between United States of America and Elgin, Joliet & Eastern Railway Company, a manifest error hath happened, to the great damage of the said Elgin, Joliet & Eastern Railway Company as by its complaint appears. We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Seventh Circuit, together with this writ, so that you have the same in the said United States Circuit Court of Appeals for the Seventh Circuit at Chicago within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals for the Seventh Circuit may cause

WRIT OF ERROR

[FORM 40]

further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 8th day of February in the year of our Lord one thousand nine hundred and seventeen.

T. C. MACMILLAN

(Seal)

*Clerk of the District Court of the United
States for the Northern Dist. of Illinois.*

Allowed by

K. M. L.

Judge.

GROUP III

NATIONAL BANKING LAWS

- No. 41. Indictment for Violation of National Banking Laws.
- No. 42. Demurrer to Indictment.
- No. 43. Charge to Jury.
- No. 44. Defendant's Exceptions to Court's Instructions to the Jury.
- No. 45. Instructions to the Jury Requested by the Defendant.
- No. 46. Motion for a New Trial.
- No. 47. Amendment to Motion for New Trial.
- No. 48. Response to Motion for New Trial.
- No. 49. Charge to Jury — Conspiracy to Violate National Banking Act.
- No. 50. Charge to Jury — Violation of National Banking Act.

FORM NO. 41

Indictment for Violation of National Banking Laws.

Boone *v.* United States, 257 Fed. 963 (C. C. A. 8th Cir.).

IN THE DISTRICT COURT OF THE UNITED STATES,
WESTERN DISTRICT OF ARKANSAS,
FORT SMITH DIVISION.

The United States of America

v.

P. A. Ball, T. W. M. Boone,
A. S. Dowd, E. M. Dickenson.

The Grand Jury of the United States of America, empaneled and sworn in the District Court of the United States, in and for the Ft. Smith Division of the Western District of Arkansas, at the June Term thereof, 1916, and inquiring for said division and district, upon their oaths present that P. A. Ball, heretofore, to wit, on the sixteenth day of January, 1914, in the division and district aforesaid, the said P. A. Ball being then and there the

VIOLATION OF NATIONAL BANKING LAWS [FORM 41]

cashier of the American National Bank of Ft. Smith, Arkansas, and which said bank was established and then existing and doing business as a bank, under and by virtue of the National Banking Laws of the United States, unlawfully, willfully and feloniously did make, in a certain report of the condition of the affairs of said bank at the close of business on, to wit, the thirteenth day of January, 1914 (which said report then and there purported to be made to the Comptroller of the Currency of the United States, in accordance with Section 5211 of the Revised Statutes of the United States), a certain false entry in the schedule on the back and a part of said report, to wit: "Liabilities of Officers and Directors", and under the headings so designated therein, in words and figures following, to wit:

<i>Names of Officers and Directors</i>	<i>Official Title</i>	<i>Overdrafts</i>
"P. A. BALL	Cashier	89
A. S. DOWD	Asst. Cashier	59 38"

and which said entry so made, then and there purported to show, and did in substance, intent, and effect state and declare that the amount then due and owing to said bank upon the individual overdraft of the said P. A. Ball, cashier as aforesaid, was only said sum of eighty-nine cents (89¢) and did in substance, intent and effect state and declare that the amount due and owing to said bank upon the individual overdraft of the said A. S. Dowd, who was then and there assistant cashier of the said bank, was only said sum of \$59.38; and the Grand Jurors aforesaid further say that the entry was and is false in this, to wit: that the amount then due and owing to said bank upon the individual overdraft of said P. A. Ball was not said sum of eighty-nine cents but was a larger sum, to wit: the sum of \$1300.89; that the amount then due and owing to said bank upon the individual overdraft of said A. S. Dowd was not said sum of \$59.38 but was a larger sum, to wit: the sum of \$459.38; and the Grand Jurors aforesaid do further say that the said P. A. Ball, cashier, as aforesaid, then and there, at the time and place of making said false entry in said report as aforesaid, well knowing the said entry and every part thereof to be then and there false as aforesaid, thereby intended to injure and defraud said bank, and to deceive the said Comptroller

of the Currency and any agent appointed by said Comptroller to examine, and in any examination by said Comptroller, and agent so appointed, of the affairs of said bank; contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States; And the Grand Jurors upon their oaths, do further present, that T. W. M. Boone, being then and there president of said bank, and A. S. Dowd and E. M. Dickenson, being then and there assistant cashiers of said bank, heretofore, to wit, at divers and sundry times before, and on the said sixteenth day of January, 1914, in the said city of Ft. Smith, Arkansas, within the jurisdiction of said court, unlawfully, willfully and feloniously, and with the intent to injure and defraud said bank, and to deceive the said Comptroller, and any agent by him thereunto appointed, in examining the affairs of said bank, did aid, abet, incite, counsel, and procure the said P. A. Ball, cashier as aforesaid, to make said false entry in manner and form as aforesaid, to do and commit; contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States.

Count 2

And the Grand Jurors aforesaid, inquiring as aforesaid, upon their said oaths, do further present that the said P. A. Ball, heretofore, to wit, on the seventh day of March, 1914, in the division and district aforesaid, the said P. A. Ball being then and there the said cashier of the American National Bank of Ft. Smith, Arkansas, and which said bank was established and then existing and doing business as a bank, under and by virtue of the National Banking Laws of the United States, unlawfully, willfully, and feloniously did make, in a certain report of the condition of the affairs of the said bank at the close of business on, to wit, the fourth day of March, 1914 (which said report then and there purported to be made to the Comptroller of the Currency of the United States, in accordance with Section 5211 of the Revised Statutes of the United States), a certain other false entry in the schedule on the back and a part of said report, to wit: "Liabilities of Officers and Directors", and under the headings so designated therein, in words and figures following, to wit:

VIOLATION OF NATIONAL BANKING LAWS [FORM 41

<i>Names of Officers and Directors</i>	<i>Official Title</i>	<i>Overdrafts</i>
"T. W. M. BOONE	President	68 82
P. A. BALL	Cashier	71 98
A. S. DOWD	Asst. Cashier	24 74
E. M. DICKENSON	Asst. Cashier	none"

and which said entry so made, then and there purported to show, and did in substance, intent, and effect state and declare that the amount then due and owing to said bank upon the individual overdraft of the said T. W. M. Boone, who was then and there President of said bank, was only the said sum of \$68.82; and did in substance, intent, and effect state and declare that the amount then due and owing to said bank upon the individual overdraft of the said P. A. Ball, cashier as aforesaid, was only the said sum of \$71.98; and did in substance, intent, and effect state and declare that the amount then due and owing to said bank upon the individual overdraft of the said A. S. Dowd, who was then and there assistant cashier of said bank, was only the said sum of \$24.74; and did in substance, intent, and effect state and declare that there was not due and owing to said bank upon any individual overdraft of the said E. M. Dickenson, who was then and there assistant cashier of said bank, any amount whatsoever; and the Grand Jurors aforesaid further say that the entry was and is false in this, to wit: that the amount then due and owing to said bank upon the individual overdraft of said T. W. M. Boone was not said sum of \$68.82 but was a much larger sum, to wit: the sum of \$668.82; that the amount then due and owing to said bank upon the individual overdraft of said P. A. Ball was not said sum of \$71.98 but was a larger sum, to wit the sum of \$371.98; that the amount then due and owing to said bank upon the individual overdraft of said A. S. Dowd was not said sum of \$24.74 but was a larger sum, to wit: the sum of \$224.74; that there was then due and owing to said bank upon the individual overdraft of said E. M. Dickenson the sum of \$1.46; and the Grand Jurors aforesaid do further say that the said P. A. Ball, cashier as aforesaid, then and there, at the time and place of making said false entry in said report as aforesaid, well knowing the said entry and every part thereof to be then and there false as aforesaid, thereby intended to injure and defraud said bank, and to deceive the said

Comptroller of the Currency and any agent appointed by said Comptroller to examine, and in any examination by said Comptroller, and agent so appointed, of the affairs of said bank; contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States.

And the Grand Jurors upon their oaths, do further present, that the said T. W. M. Boone, being then and there President, and the said A. S. Dowd and the said E. M. Dickenson, being assistant cashiers of said bank, heretofore, to wit, at divers and sundry times before, and on the said seventh day of March, 1914, in the said city of Ft. Smith, Arkansas, within the jurisdiction of said court, unlawfully, willfully, and feloniously, and with intent to injure and defraud said bank, and to deceive the said Comptroller and any agent by him thereunto appointed, in examining the affairs of said bank, did aid, abet, incite, counsel, and procure the said P. A. Ball, cashier as aforesaid, to make said false entry in manner and form as aforesaid, to do and commit; contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States.

Count 3

And the Grand Jurors aforesaid, inquiring as aforesaid, upon their said oaths, do further present that the said P. A. Ball, heretofore, to wit, on the seventeenth day of September, 1914, in the division and district aforesaid, the said P. A. Ball being then and there the said cashier of the American National Bank of Ft. Smith, Arkansas, and which said bank was established and then existing and doing business as a bank, under and by virtue of the National Banking Laws of the United States, unlawfully, willfully, and feloniously did make, in a certain report of the condition of the affairs of the said bank at the close of business on, to wit, the twelfth day of September, 1914 (which said report then and there purported to be made to the Comptroller of the Currency of the United States, in accordance with Section 5211 of the Revised Statutes of the United States), a certain other false entry in the schedule on the back and a part of said report, to wit: "Liabilities of Officers and Directors", and under the headings so designated therein, in words and figures following, to wit:

VIOLATION OF NATIONAL BANKING LAWS [FORM 41]

<i>Names of Officers and Directors</i>	<i>Official Title</i>	<i>Overdrafts</i>
"T. W. M. BOONE	President	none
P. A. BALL	Cashier	none
A. S. DOWD	Asst. Cashier	none
E. M. DICKENSON	Asst. Cashier	none"

and which said entry so made, then and there purported to show, and did in substance, intent, and effect state and declare that no amount was then due and owing to said bank by said officers upon overdrafts in their several individual accounts; and the Grand Jurors aforesaid further say that the entry was and is false in this, to wit: that there was then due and owing to said bank upon the individual overdraft of said T. W. M. Boone, who was then and there president of said bank, the sum of \$923.34; that there was then due and owing to said bank upon the individual overdraft of said P. A. Ball, cashier as aforesaid, the sum of \$791.64; that there was then due and owing to said bank upon the individual overdraft of the said A. S. Dowd, who was then and there assistant cashier of said bank, the sum of \$171.03; that there was then due and owing to said bank upon the individual overdraft of E. M. Dickenson, who was then and there assistant cashier of said bank, the sum of \$106.03; and the Grand Jurors aforesaid do further say that the said P. A. Ball, cashier as aforesaid, then and there, at the time and place of making said false entry in said report as aforesaid, well knowing the said entry and every part thereof to be then and there false as aforesaid, thereby intended to injure and defraud said bank, and to deceive the said Comptroller of the Currency and any agent appointed by said Comptroller to examine, and in any examination by said Comptroller, and agent so appointed, of the affairs of said bank, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States:

And the Grand Jurors upon their oaths, do further present, that the said T. W. M. Boone, being then and there President, and the said A. S. Dowd and the said E. M. Dickenson, being assistant cashiers of said bank, heretofore, to wit, at divers and sundry times before, and on the said seventeenth of September, 1914, in the said City of Ft. Smith, Arkansas, within the jurisdiction of said court, unlawfully, willfully, and feloniously, and

with intent to injure and defraud said bank, and to deceive the said Comptroller and any agent by him thereunto appointed, in examining the affairs of said bank, did aid, abet, incite, counsel, and procure the said P. A. Ball, cashier as aforesaid, to make said false entry in manner and form as aforesaid, to do and commit; contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States.

Count 4

And the Grand Jurors aforesaid, inquiring as aforesaid, upon their said oaths, do further present that the said P. A. Ball, heretofore, to wit, on the fourth day of May, 1915, in the division and district aforesaid, the said P. A. Ball, being then and there the said cashier of the American National Bank of Ft. Smith, Arkansas, and which said bank was established and then existing and doing business as a bank, under and by virtue of the National Banking Laws of the United States, unlawfully, willfully, and feloniously did make, in a certain report of the condition of the affairs of the said bank at the close of business on, to wit, the first day of May, 1915 (which said report then and there purported to be made to the Comptroller of the Currency of the United States in accordance with Section 5211 of the Revised Statutes of the United States), a certain other false entry in the schedule on the back and a part of said report, to wit, "Liabilities of Officers and Directors, Annual Salaries, and Shares Owned", and under the headings so designated therein, in words and figures following, to wit :

<i>Names of Officers and Directors</i>	<i>Official Title</i>	<i>Overdrafts</i>
"P. A. BALL	Cashier	86 70"

and which said entry so made, then and there purported to show, and did in substance, intent, and effect state and declare that the amount then due and owing to said bank upon the individual overdraft of the said P. A. Ball, cashier as aforesaid, was only the said sum of \$86.70; and the Grand Jurors aforesaid further say that the entry was and is false in this, to wit: that the amount then due and owing to said bank upon the individual overdraft of said P. A. Ball was not said sum of \$86.70 but was a larger sum,

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to wit: the sum of \$1036.70; and the Grand Jurors aforesaid do further say that the said P. A. Ball, cashier as aforesaid, then and there, at the time and place of making said false entry in said report as aforesaid, well knowing the said entry to be false as aforesaid, thereby intended to injure and defraud said bank and to deceive the said Comptroller of the Currency and any agent appointed by said Comptroller to examine, and in any examination by said Comptroller, and agent so appointed, of the affairs of said bank; contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States:

And the Grand Jurors upon their oaths, do further present, that the said T. W. M. Boone, then and there president, and the said A. S. Dowd and the said E. M. Dickenson, being assistant cashiers of said bank, heretofore, to wit, at divers and sundry times before, and on the said fourth day of May, 1915, in the said City of Ft. Smith, Arkansas, within the jurisdiction of said court, unlawfully, willfully, and feloniously and with intent to injure and defraud said bank, and to deceive the said Comptroller of said bank, did aid, abet, incite, counsel, and procure the said P. A. Ball, cashier as aforesaid, to make said false entry in manner and form as aforesaid, to do and commit; contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States.

Count 5

And the Grand Jurors aforesaid, inquiring as aforesaid, upon their said oaths, do further present that the said P. A. Ball, heretofore, to wit, on the sixteenth day of August, 1913, in the division and district aforesaid, the said P. A. Ball, being then and there the said cashier of the American National Bank of Ft. Smith, Arkansas, and which said bank was established and then existing and doing business as a bank, under and by virtue of the National Banking Laws of the United States, unlawfully, willfully and feloniously did make, in a certain report of the condition of the affairs of the said bank at the close of business on, to wit, the ninth day of August, 1913 (which said report then and there purported to be made to the Comptroller of the Currency of the

United States, in accordance with Section 5211 of the Revised Statutes of the United States), a certain other false entry under a certain head designated in said report as "Resources", and opposite item "18" therein, to wit, "Lawful Money Reserve in Bank", and in column therein headed "Dollar Cts", which said false entry was and is in figures following, to wit:

"49 564 20"

and which said entry so made, then and there purported to show, and did in substance, intent, and effect state and declare that the lawful money reserve in said bank was in sum of \$49,564.20; and the Grand Jurors aforesaid further say that the entry was and is false in this, to wit: that the lawful money reserve in said bank was not \$49,564.20 but was a much less sum, to wit: the sum of \$39,564.20; and the Grand Jurors aforesaid do further say that the said P. A. Ball, cashier as aforesaid, then and there, at the time and place of making said false entry in said report as aforesaid, well knowing the said entry to be then and there false as aforesaid, thereby intended to injure and defraud the said bank, and to deceive the said Comptroller of the Currency and any agent appointed by said Comptroller to examine and in any examination by said Comptroller, and agent so appointed, of the affairs of said bank, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States.

And the Grand Jurors upon their oaths, do further present, that the said T. W. M. Boone, being then and there president, and the said A. S. Dowd and the said E. M. Dickenson, being assistant cashiers of said bank, heretofore, to wit, at divers and sundry times before, and on the said sixteenth day of August, 1913, in the said City of Ft. Smith, Arkansas, within the jurisdiction of said court, unlawfully, willfully, and feloniously, and with intent to injure and defraud said bank, and to deceive the said Comptroller and any agent by him thereunto appointed, in examining the affairs of said bank, did aid, abet, incite, counsel and procure the said P. A. Ball, cashier as aforesaid, to make said false entry in manner and form as aforesaid, to do and commit; contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States.

Count 6

And the Grand Jurors aforesaid, inquiring as aforesaid, upon their said oaths, do further present that the said P. A. Ball, heretofore, to wit, on the seventh day of March, 1914, in the division and district aforesaid, the said P. A. Ball being then and there the said cashier of the American National Bank of Ft. Smith, Arkansas, and which said bank was established and then existing and doing business as a bank, under and by virtue of the National Banking Laws of the United States, unlawfully, willfully, and feloniously did make, in a certain report of the condition of the affairs of said bank at the close of business on, to wit, the fourth day of March, 1914 (which said report then and there purported to be made to the Comptroller of the Currency of the United States, in accordance with Section 5211 of the Revised Statutes of the United States), a certain other false entry under a certain head designated in said report as "Resources", and opposite item "18" therein, to wit, "Lawful Money Reserve in Bank", and in column therein headed "Dollars Cts", which said false entry was and is in figures following, to wit:

"61 153 40"

and which said entry so made, then and there purported to show, and did in substance, intent, and effect state and declare that the lawful money reserve in said bank was in the sum of \$61,153.40; and the Grand Jurors aforesaid further say that the entry was and is false in this, to wit: that the lawful money reserve in said bank was not \$61,153.40 but was a much less sum, to wit: the sum of \$41,153.40; and the Grand Jurors aforesaid do further say that the said P. A. Ball, cashier as aforesaid, then and there, at the time and place of making said false entry in said report as aforesaid, well knowing the said entry to be then and there false as aforesaid, thereby intended to injure and defraud the said bank, and to deceive the said Comptroller of the Currency and any agent appointed by said Comptroller to examine, and in any examination by said Comptroller, and agent so appointed, of the affairs of said bank, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States.

And the Grand Jurors upon their oaths, do further present, that the said T. W. M. Boone, being then and there president, and the said A. S. Dowd and the said E. M. Dickenson, being assistant cashiers of said bank, heretofore, to wit, at divers and sundry times before, and on the said seventh day of March, 1914, in the said City of Ft. Smith, Arkansas, within the jurisdiction of said court, unlawfully, willfully, and feloniously, and with intent to injure and defraud said bank, and to deceive the said Comptroller and any agent by him thereunto appointed, in examining the affairs of said bank, did aid, abet, incite, counsel, and procure the said P. A. Ball, cashier as aforesaid, to make said false entry in manner and form as aforesaid, to do and commit; contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States.

Count 7

And the Grand Jurors aforesaid, inquiring as aforesaid, upon their said oaths, do further present that the said P. A. Ball, heretofore, to wit, on the ninth day of January, 1915, in the division and district aforesaid, the said P. A. Ball being then and there the said cashier of the American National Bank of Ft. Smith, Arkansas, and which said bank was established and then existing and doing business as a bank, under and by virtue of the National Banking Laws of the United States, unlawfully, willfully, and feloniously did make, in a certain report of the condition of the affairs of the said bank at the close of business on, to wit, the thirty-first day of December, 1914 (which said report then and there purported to be made to the Comptroller of the Currency of the United States, in accordance with Section 5211 of the Revised Statutes of the United States), a certain other false entry under a certain head designated in said report as "Resources", and opposite item "20" therein, to wit, "Lawful Money Reserve in Bank", in column therein headed "Dollars Cts", which said false entry was and is in figures following, to wit:

"52 608 55"

and which said entry so made, then and there purported to show, and did in substance, intent and effect state and declare that the

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lawful money reserve in said bank was in the sum of \$52,608.55; and the Grand Jurors aforesaid further say that the entry was and is false in this, to wit: that the lawful money reserve in said bank was not \$52,608.55 but was a much less sum, to wit: the sum of \$42,608.55; and the Grand Jurors aforesaid do further say that the said P. A. Ball, cashier as aforesaid, then and there, at the time and place of making said false entry in said report as aforesaid, well knowing the said entry to be then and there false as aforesaid, thereby intended to injure and defraud the said bank, and to deceive the said Comptroller of the Currency and any agent appointed by said Comptroller to examine, and in any examination by said Comptroller, and agent so appointed, of the affairs of said bank, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States;

And the Grand Jurors upon their oaths, do further present, that the said T. W. M. Boone, being then and there president of said bank, and the said A. S. Dowd and the said E. M. Dickenson, being assistant cashiers of said bank, heretofore, to wit, at divers and sundry times before, and on the said ninth day of January, 1915, in the said City of Ft. Smith, Arkansas, within the jurisdiction of said court, unlawfully, (willfully), and feloniously, and with intent to injure and defraud said bank, and to deceive the said Comptroller and any agent by him thereunto appointed, in examining the affairs of said bank, did aid, abet, incite, counsel, and procure the said P. A. Ball, cashier as aforesaid, to make said false entry in manner and form as aforesaid, to do and commit; contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States.

Count 8

And the Grand Jurors aforesaid, inquiring as aforesaid, upon their said oaths, do further present that the said P. A. Ball, heretofore, to wit, on the fourth day of May, 1915, in the division and district aforesaid, the said P. A. Ball, being then and there the said cashier of the American National Bank of Ft. Smith, Arkansas, and which said bank was established and then existing and doing business as a bank, under and by virtue of the National Banking

Laws of the United States, unlawfully, (willfully), and feloniously did make, in a certain report of the condition of the affairs of the said bank at the close of business on, to wit, the first day of May, 1915 (which said report then and there purported to be made to the Comptroller of the Currency of the United States, in accordance with Section 5211 of the Revised Statutes of the United States), a certain other false entry under a certain head designated in said report as "Resources", and opposite items "16" and "17" therein, to wit, "Lawful Money Reserve in Bank", and in column therein headed "Dollars Cts" which said false entry was and is in figures, to wit:

"12 475 60
29 000 00"

and which said entry so made, then and there purported to show, and did in substance, intent, and effect state and declare that the lawful money reserve in said bank was in the sum of \$41,475.60; and the Grand Jurors aforesaid further say that the entry was and is false in this, to wit: that the lawful money reserve in said bank was not \$41,475.60 but was a much less sum, to wit: the sum of \$26,475.60; and the Grand Jurors aforesaid do further say that the said P. A. Ball, cashier as aforesaid, then and there, at the time and place of making said false entry in said report as aforesaid, well knowing the said entry to be then and there false as aforesaid, thereby intended to injure and defraud the said bank, and to deceive the said Comptroller of the Currency and any agent appointed by said Comptroller to examine, and in any examination by said Comptroller, and agent so appointed, of the affairs of said bank, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States.

And the Grand Jurors upon their oaths, do further present, that the said T. W. M. Boone, being then and there president, and the said A. S. Dowd and the said E. M. Dickenson, being assistant cashiers of said bank, heretofore, to wit, at divers and sundry times before, and on the said fourth day of May, 1915, in the said City of Ft. Smith, Arkansas, within the jurisdiction of said court, unlawfully, (willfully), and feloniously, and with intent to injure and defraud said bank, and to deceive the said Com-

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troller and any agent by him thereunto appointed, in examining the affairs of said bank, did aid, abet, incite, counsel, and procure the said P. A. Ball, cashier as aforesaid, to make said false entry in manner and form as aforesaid, to do and commit; contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States.

Count 9

And the Grand Jurors aforesaid, inquiring as aforesaid, upon their said oaths, do further present that the said P. A. Ball, heretofore, to wit, on the twenty-ninth day of June, 1915, in the division and district aforesaid, the said P. A. Ball being then and there the said cashier of the American National Bank of Ft. Smith, Arkansas, and which said bank was established and then existing and doing business as a bank, under and by virtue of the National Banking Laws of the United States, unlawfully, (willfully), and feloniously did make, in a certain report of the condition of the affairs of the said bank at the close of business on, to wit, the twenty-third day of June, 1915 (which said report then and there purported to be made to the Comptroller of the Currency of the United States, in accordance with Section 5211 of the Revised Statutes of the United States), a certain other false entry under a certain head designated in said report as "Resources", and opposite items "16" and "17" therein, to wit: "Lawful Money Reserve in Bank", and in column therein headed "Dollars Cts", which said false entry was and is in figures following, to wit:

"34 179 35,
15 000 00"

and which said entry so made, then and there purported to show, and did in substance, intent, and effect state and declare that the lawful money reserve in said bank was in the sum of \$49,179.35; and the Grand Jurors aforesaid further say that the entry was and is false in this, to wit: that the lawful money reserve in said bank was not \$49,179.35 but was a much less sum, to wit: the sum of \$29,179.35; and the Grand Jurors aforesaid do further say that the said P. A. Ball, cashier as aforesaid, then and there, at the time and place of making said false entry in said report as aforesaid, well knowing the said entry to be then and there false as

aforesaid, thereby intended to injure and defraud the said bank, and to deceive the said Comptroller of the Currency and any agent appointed by said Comptroller to examine, and in any examination by said Comptroller, and agent so appointed, of the affairs of said bank; contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States.

And the Grand Jurors upon their oaths, do further present, that the said T. W. M. Boone, being then and there president, and the said A. S. Dowd and the said E. M. Dickenson, being assistant cashiers of said bank, heretofore, to wit, at divers and sundry times before, and on the said twenty-ninth day of June, 1915, in the said City of Ft. Smith, Arkansas, within the jurisdiction of said court, unlawfully, willfully, and feloniously, and with intent to injure and defraud said bank, and to deceive the said Comptroller and any agent by him thereunto appointed, in examining the affairs of said bank, did aid, abet, incite, counsel and procure the said P. A. Ball, cashier as aforesaid, to make said false entry in manner and form as aforesaid, to do and commit; contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States.

J. V. BOURLAND,
United States Attorney.

Endorsed : Filed in the District Court on June 14, 1916.

FORM NO. 42

Demurrer to Indictment.

Boone *v.* United States, 257 Fed. 963 (C. C. A. 8th Cir.).

(Title of Cause.)

Now comes the defendant, T. W. M. Boone, by his attorneys, Hill, Fitzhugh & Brizzolara, and J. H. Evans & Son, and says:

(a) That each count of the indictment against him and the matters and things set forth in each of the several counts in the indictment herein as alleged and set forth in each of the several counts of the indictment are not sufficient in law to compel the said defendant to answer to any one of the counts of the indictment

for that each count of the indictment is duplicitous in this, that each count charges or attempts to charge two separate offenses against the United States, viz.: the offense of making a false entry in a report with the intent to injure and defraud the bank and the separate and distinct offense of making a false entry in a report with the intent to deceive the Comptroller of the Currency and any agent appointed by said Comptroller to examine, and in any examination by said Comptroller and agent so appointed of the affairs of said bank. This applies to each count of the indictment. The two separate offenses as above set forth are charged in each count of the indictment, and for that reason each count is duplicitous.

(b) Said indictment is insufficient in this, that the allegations therein against this defendant in each count charge him with being an accessory, and the allegations show that if he were guilty of any offense at all it would be that of a principal and not that of an accessory.

(c) Said indictment is insufficient in counts numbered 1, 2, 3, and 4 in that the alleged statement to the Comptroller is not a part of the statement called for by Section 5211, which statute requires a statement to be made of the resources and liabilities of the bank and the particularization as to the overdrafts of the officers is not part of the report required to be made by law.

(d) These things so above set forth he is ready to verify.

Wherefore, he prays judgment and that he be dismissed and discharged of the said indictment.

T. W. M. BOONE,
By J. H. EVANS & SON &
HILL, FITZHUGH & BIZZOLARA,
His Attorneys.

FORM NO. 43

Charge to Jury.'

Boone *v.* United States, 257 Fed. 963 (C. C. A. 8th Cir.).

Youmans, J.—The indictment in this case is based on Section 5209 of the Revised Statutes of the United States, which section reads as follows:

"Every president, director, cashier, teller, clerk or agent of any association, who embezzles, abstracts or willfully misapplies any of the moneys, funds or credits of the association; or who, without authority from the directors, issues or puts in circulation any of the notes of the association; or who, without such authority, issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment or decree; or who makes any false entry in any book, report or statement of the association, with intent, in either case to injure or defraud the association or any other company, body politic or corporate, or any individual person, or to deceive any officer of the association, or any agent appointed to examine the affairs of any such association; and every person who with like intent aids and abets any officer, clerk, or agent in any violation of this section shall be deemed guilty of a misdemeanor, and shall be imprisoned not less than five years nor more than ten."

You will note that the section of the statute just read denounces as offenses a number of acts done by a president, director, cashier, teller, clerk or agent of a national bank, and anyone who aids and abets any officer, clerk or agent in any violation of this section. The portion of the section read to you which is material and applicable in this case reads as follows:

"Every president, director, cashier, teller, clerk or agent of any association . . . who makes any false entry in any book, report, or statement of the association, with intent . . . to injure or defraud the association . . . or to deceive . . . any agent of the association appointed to examine the affairs of any such association, and every person who with like intent aids or abets any officer, clerk, or agent in any violation of this section, shall be deemed guilty of a misdemeanor. . . ."

The association referred to in this section is a national banking association, commonly called a national bank.

The indictment in this case contains nine counts. Each count is a separate and distinct charge.

You will note that different acts are made offenses under the section read to you. The indictment in this case charges acts which constitute one class of offenses enumerated in that section

and that is, false entries in reports to the Comptroller of the Currency.

You will note, also, that the section referred to makes one who aids and abets any officer, clerk or agent of a national bank in making any false entry in any report of the association with intent to injure or defraud the association, or to deceive any agent appointed to examine the affairs of such association, equally guilty with the officer, clerk, or agent of such bank who makes the false entries, provided such officer, clerk or agent and such alleged aider and abettor have the intents stated.

An "aider and abettor" is one who advises, counsels, procures or encourages another to commit a crime, whether personally present or not at the time and place of the commission of the offense.

The indictment charges that P. A. Ball, as cashier of the bank, made certain false entries in certain reports to the Comptroller of the Currency with intent to injure and defraud the bank and to deceive the Comptroller of the Currency and any agent appointed by him to examine the affairs of the bank, and that defendant T. W. M. Boone, with like intent or intents, aided and abetted Ball in these acts.

The first four counts of the indictment charge the defendant Boone with aiding and abetting Ball in making false entries in reports to the Comptroller in regard to the overdrafts of Boone, Ball, Dowd and Dickenson; Boone being president of the bank, Ball being its cashier, and Dowd and Dickenson being assistant cashiers.

The last five counts of the indictment charge the defendant Boone with aiding and abetting Ball in making false entries in reports to the Comptroller in regard to the lawful money reserve of the bank.

To constitute the offense of aiding and abetting the making of false entries there must appear knowledge on the part of the alleged aider and abettor of the making or intention to make false entries by or on the part of another with acts on the part of the alleged aider and abettor to aid, assist or incite by way of advice, counsel, procurement and encouragement in making the alleged false entries.

To constitute the offense of making false entries in a report it must appear that the entries were false, that they were known to be false; and that they were made with the intent either to injure or defraud the bank or to deceive the Comptroller of the Currency or any agent appointed by the Comptroller to examine the affairs of the bank.

You will note that in each one of the nine counts of the indictment, three intents are charged:

1st. To injure and defraud the bank.

2nd. To deceive the Comptroller of the Currency in examining the affairs of the bank.

3rd. To deceive any agent appointed by the Comptroller of the Currency in examining the affairs of the bank.

To constitute an offense it must appear that the act charged in the count in the indictment under consideration was done with one or more of the three intents above enumerated.

It becomes important then to ascertain what is meant by the intent to injure and defraud the bank; the intent to deceive the Comptroller of the Currency; and the intent to deceive any agent appointed by the Comptroller to examine the affairs of the bank.

Ordinarily the intent with which a man does a criminal act is not proclaimed by him. Usually there is no direct evidence by which the jury may determine from the statements or declarations of the defendant on trial what he intended when he did a certain act. With regard to the intent to injure and defraud the statute does not mean that it must be made to appear to the jury that the defendant had malice or ill will towards the bank, or that he intended to wreck it. The intent to injure or defraud contemplated by the statute is not inconsistent with a deep and abiding interest on the part of the accused in the prosperity of the bank, and a sincere desire for its continued and ultimate success and welfare. But, if separate and apart from that general purpose, there is another and specific purpose, in a particular instance, to do an act, the natural and ordinary effect of which is to injure and defraud the bank, or to deceive the Comptroller of the Currency, or to deceive some agent appointed by him to examine the affairs of the bank, or any one of those intents, and the act is done with that intent, it is that specific intent which determines whether

the act is criminal or not. If a man knows that the act he is about to commit will naturally or necessarily have the effect to injure and defraud another, or to deceive another, and he voluntarily and intentionally does the act he is chargeable in law with the intent to injure and defraud, or to deceive.

The law presumes that every man intends the natural and ordinary consequences of his acts. Wrongful acts, knowingly and intentionally committed, cannot be justified on the ground of innocent intent.

With regard to the charge of an intent to deceive the Comptroller of the Currency, if the entries made in the reports were known to be false at the time they were entered, and they were knowingly and intentionally entered in the reports to be transmitted to the Comptroller, and if the natural and necessary consequence of the appearance of such false entries in such reports would be to deceive the Comptroller as to the item covered by the false entry, then the intent to deceive sufficiently appears to constitute the false entry a crime. What has been said with regard to the intent to deceive the Comptroller applies to the allegation of intent to deceive any agent appointed by the Comptroller to examine the affairs of the bank.

You will bear in mind that in no one of the nine counts in this indictment is the defendant Boone charged with making a false entry. In each count he is charged with aiding and abetting Ball in making a false entry. Therefore, in the consideration of any count, before you can find the defendant Boone guilty, you must, on that count, first find the testimony sufficient to find Ball, if he were on trial, guilty beyond a reasonable doubt of the particular offense, the commission of which, the defendant Boone is charged with aiding and abetting. You will, therefore, in the consideration of any count, first determine whether Ball made the false entry charged in that count with the intent to injure and defraud the bank, or to deceive the Comptroller or some agent appointed by him. If you find beyond a reasonable doubt that Ball made the false entry charged with the intent to injure or defraud the bank, or to deceive the Comptroller, or some agent appointed by him, you will then determine whether the defendant, Boone, aided and abetted Ball in making such false entry with

like intent. If you find beyond a reasonable doubt that Boone aided and abetted Ball in the making of such false entry with intent to injure and defraud the bank or to deceive the Comptroller or some agent appointed by him, then you will find the defendant Boone guilty as to such count. If you do not so find beyond a reasonable doubt you will find him not guilty as to that count.

In other words before you can find the defendant Boone guilty on any count in the indictment, you must believe from the evidence beyond a reasonable doubt that the entry mentioned in that count was made by Ball, that he knew when he made such entry that it was false, that he made it either with the intent to injure and defraud the bank, or to deceive the Comptroller, or some agent appointed by him to examine the affairs of the bank. In addition you must find beyond a reasonable doubt that defendant Boone aided and abetted Ball in making such false entry, or counseled or procured him to make it. If the testimony fails to prove to your satisfaction, beyond a reasonable doubt, any of these requisites, in the count under consideration, then you should acquit the defendant on that count. If the testimony fails in that regard on all the counts then you should acquit the defendant on all counts in the indictment.

The material allegations in the first count of the indictment are as follows:

1st. That the American National Bank of Fort Smith, Arkansas, was a bank organized and doing business under the laws of the United States as a national bank.

2nd. That P. A. Ball was cashier, and defendant T. W. M. Boone was president of said bank.

3rd. That on or about the 16th day of January, 1914, the said Ball, as cashier, made a false entry in a report to the Comptroller of the Currency of the condition of the bank on the 13th day of January, 1914, which false entry consisted in substance of words and figures to the effect that said P. A. Ball was stated to be indebted to said bank on overdraft on that day in the sum of 89 cents, and that A. S. Dowd, Assistant Cashier of said bank, was indebted to it on overdraft on that day in the sum of \$59.38, when in fact the said Ball was on that day indebted to said bank on

overdraft in the sum of \$1300.89, and that said Dowd was on that day indebted to said bank on overdraft in the sum of \$459.38.

4th. That said Ball made said false entry in said report with the intent 1st to injure and defraud the bank, 2nd to deceive the Comptroller of the Currency, and 3rd to deceive any agent appointed by the Comptroller to examine the affairs of the bank.

5th. That defendant Boone aided, incited, counseled, and procured Ball to make the entry with the same intent on his part that it is charged in the indictment, that Ball had when he made the entry.

These allegations in the first count are all material and they must be proved beyond a reasonable doubt before defendant can be convicted on that count.

The allegations in the 2nd, 3rd and 4th counts, except as to dates, amounts and persons are similar to those in the first count. What has been said with regard to proof beyond a reasonable doubt as to the first count applies to the counts last named as well as to all subsequent counts.

The second count charges the false entry to be with regard to the overdrafts of T. W. M. Boone, president, P. A. Ball, cashier, A. S. Dowd, assistant cashier, and E. M. Dickenson, assistant cashier, on the fourth day of March, 1914. The second count charges that Ball stated in substance in a report to the Comptroller that the overdraft of T. W. M. Boone on that day was \$68.62 when in fact it was \$668.62, that the overdraft of P. A. Ball on that day was \$71.98 when in fact it was \$371.98, that the overdraft of A. S. Dowd on that date was \$24.74 when in fact it was \$224.74, that E. M. Dickenson, Assistant Cashier, was not indebted on overdraft to said bank at all on said date, when in fact he was indebted to it in the sum of \$1.46.

Before defendant Boone can be convicted on this count you must find beyond a reasonable doubt that these entries or one or more of them were false, that they were made by Ball, knowing them to be false, that he made them with the intent to injure and defraud the bank, or to deceive the Comptroller, or some agent appointed by him to examine the affairs of the bank, and that defendant knowingly aided and abetted Ball in making such entry or entries and with like intent.

The third count of the indictment also charges the false entry to be with regard to the overdrafts of T. W. M. Boone, president, P. A. Ball, cashier, A. S. Dowd, assistant cashier and E. M. Dickenson, assistant cashier, on the 12th day of September, 1914. The third count charges that Ball stated in substance in a report to the Comptroller that neither of said officers was indebted to said Bank, on overdraft on that day when in fact those officers were indebted to it on that day on overdraft as follows: Boone in the sum of \$932.34, Ball in the sum of \$791.64, Dowd in the sum of \$171.03, and Dickenson in the sum of \$106.03. What has been said with regard to the testimony necessary to convict on the first and second count applies also to the third count.

The fourth count charges the false entry to be with regard to the overdraft of P. A. Ball on the first day of May, 1915, in a report to the Comptroller, wherein it was stated in substance that said Ball was indebted to the bank on overdraft on that day in the sum of \$86.70, when in fact he was indebted to it on overdraft on that day in the sum of \$1036.70. What has been said with regard to the testimony necessary to convict on the first, second and third count applies also to the fourth count.

To recapitulate, the first, second, third and fourth counts in the indictment each charges that Ball made a false entry in a report to the Comptroller of the Currency in respect to the overdrafts of certain officers of the bank and that Ball made such false entry in the reports to the Comptroller with intent to injure and defraud the bank with the intent to deceive the Comptroller of the Currency and any agent appointed by the Comptroller to examine the affairs of the bank, and that defendant Boone with like intent, aided, abetted, advised and procured Ball to make such false entries.

Now unless you find from the evidence beyond a reasonable doubt that defendant Boone aided, abetted, advised or procured such false entry to be made by Ball in said reports you should find defendant Boone not guilty on these counts.

If Ball made the false entries charged in these counts of his own volition and without the aid, advice or procurement of Boone, defendant Boone is not guilty on these counts.

The 5th, 6th, 7th, 8th and 9th counts charge false entries to have

been made by Ball in reports to the Comptroller with regard to the amount of the lawful money reserve with intent to injure and defraud the bank, to deceive the Comptroller and any agent appointed by him to examine the affairs of the bank and that defendant aided and abetted Ball in making such entries and with like intent.

What has been said with regard to the testimony necessary to convict on the first, second, third and fourth counts applies to the fifth, sixth, seventh, eighth and ninth counts.

The law requires a national bank to keep a money reserve of a certain percentage of the deposits. Part of this must be money in the vault, part of it must now be in the Federal Reserve Bank and the remainder may be in other banks. Should the reserve be below the percentage required, the Comptroller may require that it be increased within thirty days and if it fails to comply with such requirement, the Comptroller may appoint a receiver for the bank. These reports to the Comptroller are to keep him advised as to the true condition of the bank, so that he may exercise such supervision over it as his judgment may dictate.

In respect to count five in this indictment, if Dowd made the report referred to in this count while Ball was at Waldron and did so without the aid of Ball, and said report was published in the newspaper and defendant Ball on his return from Waldron took the report prepared by Dowd on a basis from which to make the report to be sent to the Comptroller and procured details from the book-keepers and others to enter in the report, and at the time of making this report to the Comptroller Ball was not conscious and did not know that there was any false entry in this report at the time he made it, then defendant Ball is not guilty under count five in this indictment, and if Ball is not guilty under count five, then Boone is not guilty of aiding, abetting, advising or procuring Ball to make a false entry in this report and you should find defendant Boone not guilty on count five in the indictment.

If you find from the evidence that defendant Boone was frequently overdrawn in his account with the bank, and that he knew this or ought to have known it and that it was a violation of instructions from the Comptroller to allow overdrafts of officers, this is not sufficient in itself to warrant you in convicting defendant

on any count in the indictment. This testimony was permitted to go to the jury for the purpose of showing or tending to show the state of defendant's account and as tending to show the knowledge or want of knowledge of the existence of the overdrafts mentioned in the first four counts of the indictment.

The general deposit of money in the bank creates the relation of debtor and creditor between the depositor and the bank. The money becomes the money of the bank and the bank owes the depositor the amount of the deposit. In such case it is not material that some one of the deposits are made to the individual account of the depositor, some to his account as trustee, and some to the account of the depositor as guardian, if such is the case. This is a mere matter of convenience for the depositor in keeping his affairs in various relations separate from each other. The bank owes the money to the depositor, and it is for the depositor to settle with any other persons towards whom he sustains a trust relation.

If defendant Boone had an individual account with the bank, an account as guardian with the bank, and an account as trustee with the bank, then he had the right to transfer credit from one account to the other whenever he wished to do so, so far as the bank was concerned, and no inference prejudicial to defendant can be drawn from that act standing alone. No transfer of credit from one account to another by defendant Boone is material in determining the issues in this case. Those issues have been defined in the instructions already given.

Although you may believe from the evidence that the defendant Boone was negligent and careless in the management of said bank, and was negligently ignorant of the affairs of said bank, or negligently ignorant of the truth or falsity of the entries in said reports, yet this would not render him criminally liable. Negligence or carelessness might be sufficient to make him liable in a civil action, but, before he can be convicted, the proof must go further and show a willful and intentional violation of the National Banking Law, as the same has been explained to you in these instructions. The defendant can only be held criminally liable for an evil intent actually existing in his mind at the time. That is, he must have known that the entries were false, and made by

the said Ball for the purpose of injuring or defrauding the bank, or deceiving the Comptroller or an agent appointed by him to examine the bank, and the proof must go further and show that the said Boone with this knowledge aided, abetted, counseled or procured the making of such alleged false entries.

You are instructed that a false entry in a report of a National Bank officer to the Comptroller of the Currency within the meaning of the Revised Statutes, Section 5209 is not merely an incorrect entry made with inadvertence, negligence or by mistake. It is an entry known to the maker to be untrue and incorrect, and intentionally entered with knowledge of its false and untrue character. The intention to injure and defraud or to deceive is necessary to constitute a violation of the statute, and you must be satisfied beyond a reasonable doubt from the evidence first, that the said Ball made false entries in said report as charged in the indictment, and second, that it was made with the intention of defrauding the bank or deceiving the Comptroller of the Currency or some agent appointed by the Comptroller to examine said bank, and third, that the defendant Boone knew at the time that said entries were false and made for the purposes above mentioned, and with said knowledge aided, abetted or procured the said Ball to make such entries in such reports.

There has been testimony to the effect that defendant desired to liquidate the American National Bank. The National Banking Act authorizes a National Bank to liquidate, which means that another National Bank, under the direction of the Comptroller, may take over all the assets of the liquidating bank, and when it does so, it must pay all depositors and creditors of the liquidating bank and collect all its assets, and if more is collected than necessary to pay its debts the residue is paid to the stockholders of the liquidating bank.

You are further instructed that the defendant Boone is presumed to be innocent until the contrary appears beyond a reasonable doubt, and every reasonable doubt or presumption arising from the evidence must be construed in his favor. This presumption of the innocence of the defendant Boone follows him throughout the trial and protects him from conviction until overcome by proof showing his guilt to your satisfaction beyond a reasonable doubt.

If you believed from the evidence that at the time of the acts alleged against him in this case defendant Boone was a man of good character for being an honest, truthful, law-abiding citizen, then you should consider this good character in determining his guilt or innocence of the several charges made against him in this case, and if after considering all the evidence in this case, including the evidence of good character, you entertain reasonable doubt of the guilt of the defendant you should acquit him. This applies to each count of the indictment separately as well as to the indictment as a whole.

You are instructed that the previous good character of the defendant, if proved to your satisfaction in this case, should be considered by you, together with all the other facts in evidence, in passing upon the questions of defendant's guilt or innocence of the charge, for the law presumes that a man whose character is good is less likely to commit a crime than one whose character is not good.

You are instructed that if you believe from the evidence that the defendant has established and proven a good character before the present charges were brought, then such good character may be such as to create a doubt in the minds of the jury and lead them to believe, in view of the improbability of a person of such character being guilty, that the other evidence is false.

You are instructed that the proof must not only show the entries mentioned in the indictment were knowingly false, but before the defendant can be convicted the proof must also show that the said entries were made for the purpose of injuring or defrauding the bank, or to deceive the Comptroller of the Currency or some agent appointed by him to examine the affairs of said bank.

If you believe from the evidence that the said Ball made the alleged false entries in said reports without aid, counsel or procurement from the defendant Boone, then you should acquit the defendant, even though you believe that said entries were false and made for the purpose mentioned in the indictment.

In arriving at a conclusion as to the intent of Ball and defendant Boone, you should take into consideration all the facts and circumstances introduced in evidence which bear on that phase of the case.

If the facts and circumstances introduced in evidence tending to defendant's guilt can be reasonably explained on a theory which excludes guilt, then it cannot be said that those facts and circumstances are sufficient to show his guilt beyond a reasonable doubt. In other words, all of the facts proven must not only be consistent with and point to defendant's guilt, but they must also be inconsistent with his innocence.

The burden of proof is on the government to establish every element of the crime charged against the defendant beyond a reasonable doubt, and this applied to the intent both of Ball and Boone as alleged in the indictment.

As to the testimony of the witness Ball you are instructed that an accomplice in the commission of a crime is a competent witness, and that the government has the right to use him as such. It is the duty of the court to admit his testimony if it is otherwise competent, and it is the duty of the jury to consider it. His testimony, however, is to be received with caution, and weighed and scrutinized with great care. The jury should not rely upon it unsupported unless it produces in your minds the most positive conviction of its truth.

It is for you to say whether the testimony of Ball has been supported by other evidence. It is just and proper for you to seek in the testimony for corroborating facts and circumstances as to the material parts or some of the material parts of his testimony. But this is not essential provided his testimony produces in your minds full and complete conviction of its truth. Moreover if you find that he is corroborated by facts and circumstances in evidence as to some material parts of his testimony, you are not to understand that he is to be believed only as to such parts as are thus confirmed. That would be virtually to exclude all of his testimony, in as much as the confirmatory evidence may of itself prove those parts to which it applies. If he is confirmed in material parts connecting the defendant with the offenses charged in the indictment he may be credited in others. It is for you to say, in the light of all the facts, what measure of credibility you will give to his testimony. If you find from the testimony that the witness Ball testifies under the hope of a lighter sentence upon his plea of guilty, or under the hope of clemency from the govern-

ment, or in the hope of dismissal of indictments against him, you will take that into consideration in weighing his testimony.

The defendant has entered his plea of "Not guilty." He is presumed to be innocent until the testimony in the case overturns that presumption and establishes his guilt beyond a reasonable doubt.

A reasonable doubt is not a conjectural, or a captious, or imaginary doubt. It is not something that must be sought for, or conjured up; but it is that feeling which arises naturally in your minds from the consideration of all the evidence in the case and prevents you from reaching a conclusion that satisfies you of defendant's guilt. It is the opposite of an unreasonable doubt. If after considering all the evidence in the case your mind is in that state of uncertainty that would prevent you from acting if a most important business matter of your own were involved, then you are instructed that such a condition of mind constitutes a reasonable doubt as to defendant's guilt, and you should acquit him. But if, after such consideration, you are satisfied of defendant's guilt to that degree of certainty that would induce you to act if a most important business matter of your own were involved, then you are instructed to find the defendant guilty.

You are the sole judges of the testimony and the credibility of the witnesses. It is your duty to reconcile the testimony, if you can; that is, to reach a conclusion which will permit the testimony of all the witnesses to stand, if that can be done. Every witness is presumed to speak the truth, until the contrary appears. The contrary may appear in a number of ways; one or more witnesses may testify to a state of facts, and another one or more may testify to a state of facts directly opposite. It is then for you to say which you will believe. One witness may state facts which modify or explain facts testified to by another. This may arise because one has had better means of knowing that about which he testifies than the other. The manner and deportment of one witness while testifying may lead you to believe that his story is true, while the manner and deportment of another witness may convince you that his story is not trustworthy. The interest of one witness in the result of a trial may be so apparent as to lead you to discredit his statement, or the improbability of

the story of one witness may lead you to disregard it in favor of the more probable story of another. All these things must be taken into consideration. You are to bring to the consideration of the testimony your impartial and unbiased judgment, and judge the evidence of each witness by the reasonableness or unreasonableness of his story ; the means he has of knowing that about which he testified ; his interest, if any ; his bias or prejudice, if he manifests any, and give all the testimony of each witness the weight it should have in reaching a conclusion as to what is the truth of the case.

FORM NO. 44

Defendant's Exceptions to Court's Instructions to the Jury.

Boone v. United States, 257 Fed. 963 (C. C. A. 8th Cir.)

To which charge the defendant, at the time, and in the presence and hearing of the Jury, objected, and excepted to so much of the court's said instructions herein, that to constitute an offense under the indictment, it must appear that the act charged in the indictment was done with one or more of these three intents, to wit :

First : To injure and defraud the Government ;

Second : To deceive the Comptroller of the Currency in examining the affairs of the Bank ;

Third : To deceive any agent appointed by the Comptroller to examine the affairs of the Bank.

The court overruled said objection, and the defendant, at the time, and in the presence and hearing of the Jury, duly excepted to the above part of the charge of the court to the Jury, and objected separately and severally to each of said declarations, which objections, and each of them, were overruled by the court, and the defendant, at the time, and in the presence and hearing of the Jury, duly saved his separate and several exceptions to the action of the court in overruling his objection.

Note : The Boone case establishes the law as to the liability of a Bank President as an accessory. Many important questions were decided and the dissenting opinion of Sanborn, J. is worthy of study.

FORM NO. 45

Instructions to the Jury Requested by the Defendant.

Boone v. United States, 257 Fed. 963 (C. C. A. 8th Cir.)

The defendant in the presence and hearing of the jury, requested the court to give the following instructions, each and all of which were refused by the court:

Defendant's Refused Instruction (a)

There are nine counts in this indictment upon which the defendant is on trial. The first four counts in the indictment charge that P. A. Ball unlawfully and feloniously made certain false entries in certain reports of the condition of the American National Bank of Fort Smith, Arkansas; said reports purporting to be made to the Comptroller of the Currency, and said alleged false entries being as to the amount of overdraft of certain officers of the bank.

The other five counts in the indictment charge that the said Ball unlawfully and feloniously made certain false entries in certain reports of the condition of the bank, which last alleged false entries were as to the amount of the unlawful money reserve in the bank at the times mentioned therein.

It is further charged in the indictment that the said Ball knew that all of said entries in said reports were false and that all of said entries were made to injure and defraud said bank and to deceive the Comptroller of the Currency and any agent appointed by the Comptroller to examine the affairs of the bank. It is not charged in the indictment that the defendant Boone made any of the alleged false entries, but the indictment charges that the defendant Boone unlawfully, willfully and feloniously, and with intent to injure and defraud the bank, and to deceive the Comptroller and any agent appointed by him to examine the affairs of said bank, aided, abetted and incited, counseled and procured the defendant Ball, to make said false entries in said reports.

To refusal of the court to give said instruction, defendant at the time, and in the presence and hearing of the jury, duly saved his exception.

INSTRUCTIONS TO JURY REQUESTED BY DEFENDANT [FORM 45]

Defendant's Refused Instruction (b)

Under the law and evidence in this case you are instructed that you should return a verdict of not guilty against the defendant under count No. nine in the indictment.

To refusal of the court to give said instruction, defendant at the time, and in the presence and hearing of the jury, duly saved his exception.

Defendant's Refused Instruction (c)

Though you may believe from the evidence that the said Ball made false entries in said reports for the purposes mentioned in the indictment, still the defendant, Boone, cannot be convicted unless you believe from the evidence, beyond a reasonable doubt, that the defendant Boone at the time knew that said false entries were being made for the purposes mentioned in the indictment, and with such knowledge aided, abetted, counseled or procured the said Ball to make such alleged false entries.

To refusal of the court to give said instruction, defendant at the time, and in the presence and hearing of the jury, duly saved his exception.

Defendant's Refused Instruction (d)

Mere knowledge on the part of the defendant Boone, if you believe from the evidence that he had such knowledge, that the said Ball had made false entries in said reports as charged in the indictment, is not sufficient to warrant you in convicting the defendant Boone. Before you can convict the defendant Boone the proof must go further and show that he actually participated in the making of such alleged false entries by aiding, abetting and inciting, counseling or procuring the said Ball to make same.

To refusal of the court to give said instruction, defendant at the time, and in the presence and hearing of the jury, duly saved his exception.

Defendant's Refused Instruction (e)

Before you can convict the defendant Boone in this case you must believe from the evidence beyond a reasonable doubt that the entries in the reports mentioned in the indictment were made

by the said Ball, and that such entries were knowingly false and also that they were made for the purpose of injuring or defrauding the bank, or to deceive the Comptroller of the Currency or some agent appointed by him to examine the affairs of the said bank. And in addition to the above, you must also believe from the evidence, beyond a reasonable doubt, that the defendant Boone aided, abetted, counseled or procured the said Ball to make such alleged false entries. If the Government has failed to prove any of the above matters to your satisfaction beyond a reasonable doubt, then you should acquit the defendant, Boone.

To refusal of the court to give said instruction defendant at the time, and in the presence and hearing of the jury, duly saved his exception.

Defendant's Refused Instruction (f)

The defendant Boone is presumed to be innocent, and this presumption is evidence in his behalf, follows him through the trial and protects him from conviction until his guilt has been established by the evidence to your satisfaction beyond a reasonable doubt.

To refusal of the court to give said instruction, defendant at the time, and in the presence and hearing of the jury, duly saved his exception.

Defendant's Refused Instruction (g)

The jury are the sole judges of the credibility of the witnesses and of the weight to be given their testimony. This applies to the testimony of the defendant as well as that of other witnesses. In determining what weight you will give to the testimony of a witness you may consider his interest, if any, in the result of the trial; his bias or prejudice, if any, in favor of or against the accused; the motives which prompt him to give his testimony; the reasonableness or unreasonableness of his statements; his demeanor on the stand and his manner of testifying; his candor or lack of it; his means of knowing that about which he testifies; and, applying your knowledge and observation of human actions, motives and affairs you will find the truth and return that in your verdict.

INSTRUCTIONS TO JURY REQUESTED BY DEFENDANT [FORM 45]

To refusal of the court to give said instruction, defendant at the time, and in the presence and hearing of the jury, duly saved his exception.

Defendant's Refused Instruction (*h*)

You are instructed that the evidence of good character is evidence which must be considered, and if, in the judgment of the jury, such character does raise a doubt against positive evidence, they have the right to entertain this doubt, and the defendant must have the benefit of it.

To refusal of the court to give said instruction, defendant at the time, and in the presence and hearing of the jury, duly saved his exception.

Defendant's Refused Instruction (*i*)

The law presumes that defendant Boone is not guilty on any count in the indictment and this presumption is evidence in his favor, and protects him from conviction until his guilt on that count is established to your satisfaction beyond a reasonable doubt. By a reasonable doubt is not meant a mere captious or imaginary doubt, but a doubt that arises naturally in your minds and which leaves your minds in that condition that you do not feel an abiding conviction to a moral certainty that defendant is guilty.

To refusal of the court to give said instruction, defendant at the time, and in the presence and hearing of the jury, duly saved his exception.

Defendant's Refused Instruction (*j*)

If defendant Boone was negligent and careless and ought to have known that Ball and others were mismanaging the affairs of the bank, or making false entries in the books of the bank, or that Ball was making false entries in reports to the Comptroller with intent to injure or defraud the bank, or with intent to deceive the Comptroller or any agent appointed by the Comptroller to examine the affairs of the bank, this carelessness and negligence on the part of Boone if you find that it existed will not justify you in convicting Boone on any count in this indictment. Before

you can convict defendant Boone on any count in the indictment you must find from the evidence beyond a reasonable doubt that he aided, abetted, advised and procured Ball to make the false entry charged in that count and that defendant Boone so aided, advised, and procured Ball to make such false entry with the intent to injure or defraud the bank or to deceive the Comptroller or some agent appointed by the Comptroller to examine the affairs of the bank.

To refusal of the court to give said instruction, defendant at the time, and in the presence and hearing of the jury, duly saved his exception.

Defendant's Refused Instruction (*k*)

You are instructed that although you may believe from the evidence that the defendant Boone was negligent and careless in the management of said bank, and was negligently ignorant of the affairs of said bank, or negligently ignorant of the truth or falsity of the entries in said reports showing the amount of the officers' overdrafts or the amount of lawful money reserve in said bank, yet this would not authorize you to convict him in this case. Negligence or carelessness might be sufficient to make him liable in a civil action, but, before he can be convicted of the offense charged in the indictment, the proof must go further and show a willful and intentional violation of the National Banking Law, as the same has been explained to you in these instructions. The defendant can only be held criminally liable for an evil intent actually existing in his mind at the time. That is, he must have known that the entries were false, and made by the said Ball for the purpose of injuring or defrauding the bank, and the proof must go further and show that the said Boone with this knowledge aided, abetted, counseled or procured the making of such alleged false entries.

To refusal of the court to give said instruction, defendant at the time, and in the presence and hearing of the jury, duly saved his exception.

Defendant's Refused Instruction (*l*)

The general deposit of money in the bank creates the relation of debtor and creditor between the depositor and the bank. The

INSTRUCTIONS TO JURY REQUESTED BY DEFENDANT [FORM 45]

money becomes the money of the bank and the bank owes the depositor the amount of the deposit. In such case it is not material that some of the deposits are made to the individual account of the depositor, some to his account as trustee, and some to the account of the depositor as guardian, if such is the case. This is a mere matter of convenience for the depositor in keeping his affairs in various relations separate from each other. The bank owes the money to the depositor, and it is for the depositor to settle with any other persons toward whom he sustains a trust relation.

To refusal of the court to give said instruction, defendant at the time, and in the presence and hearing of the jury, duly saved his exception.

Defendant's Refused Instruction (m)

If the defendant Boone had an individual account with the bank, an account as guardian with the bank, and an account as trustee with the bank, then he had the right to transfer credit from one account to the other whenever he wishes to do so, so far as the bank was concerned.

To refusal of the court to give said instruction, defendant at the time, and in the presence and hearing of the jury, duly saved his exception.

Defendant's Refused Instruction (n)

If you believe from the evidence that at the time of the acts alleged against him in this case defendant Boone was a man of good character for being an honest, truthful, law-abiding citizen, then you should consider this good character in determining his guilt or innocence of the several charges made against him in this case, and if after considering all the evidence in the case, including the evidence of good character, you entertain reasonable doubt of the guilt of the defendant you should acquit him. This applies to each count of the indictment separately as well as to the indictment as a whole.

To refusal of the court to give said instruction, defendant at the time, and in the presence and hearing of the jury, duly saved his exception.

Defendant's Refused Instruction (o)

You are instructed that the previous good character of the defendant, if proved to your satisfaction in this case, should be considered by you together with all the other facts in evidence, in passing upon the questions of defendant's guilt or innocence of the charge, for the law presumes that a man whose character is good is less likely to commit a crime than one whose character is not good.

To refusal of the court to give said instruction, defendant at the time, and in the presence and hearing of the jury, duly saved his exception.

Defendant's Refused Instruction (p)

You are instructed that if you believe from the evidence that the defendant has established and proven a good character before the present charges were brought, then such good character may be such as to create a doubt in the minds of the jury and lead them to believe, in view of the improbability of a person of such character being guilty, that the other evidence is false.

To refusal of the court to give said instruction, defendant at the time, and in the presence and hearing of the jury, duly saved his exception.

Defendant's Refused Instruction (q)

You are instructed that the evidence of good character is evidence which must be considered, and if in the judgment of the jury such character does raise a doubt against positive evidence, they have the right to entertain this doubt, and the defendant must have the benefit of it.

To refusal of the court to give said instruction, defendant at the time, and in the presence and hearing of the jury, duly saved his exception.

Defendant's Refused Instruction (r)

If you find from the evidence that defendant Boone was frequently overdrawn on his account with the bank and that he knew this or ought to have known it and that it was a violation of instructions from the Comptroller to allow overdrafts of officers,

INSTRUCTIONS TO JURY REQUESTED BY DEFENDANT [FORM 45]

this is not sufficient to warrant you in convicting defendant on any count of the indictment in this case.

To refusal of the court to give said instruction, defendant at the time, and in the presence and hearing of the jury, duly saved his exception.

Defendant's Refused Instruction (s)

You are further instructed that the defendant Boone is presumed to be innocent until the contrary appears beyond a reasonable doubt; and every reasonable doubt or presumption arising from the evidence must be construed in his favor. This presumption of the innocence of the defendant Boone follows him throughout the trial and protects him from conviction until overcome by proof showing his guilt to your satisfaction beyond a reasonable doubt.

To refusal of the court to give said instruction, defendant at the time, and in the presence and hearing of the jury, duly saved his exception.

Defendant's Refused Instruction (t)

You are instructed that a false entry in a report of a national bank officer to the Comptroller of the Currency within the meaning of the Revised Statutes, Section 5209, is not merely an incorrect entry made with inadvertence, negligence, or by mistake. It is an entry known to the maker to be untrue and incorrect, and intentionally entered with knowledge of its false and untrue character. The intention to deceive is necessary to constitute a violation of the statute, and you must be satisfied beyond a reasonable doubt from the evidence, First: That the said Ball made false entries in said report as charged in the indictment, and Second: That it was made with the intention of defrauding the bank or deceiving the Comptroller of the Currency, or some agent appointed by the Comptroller to examine said bank, and, Third: That the defendant Boone knew at the time that said entries were false and made for the purposes above mentioned and with such knowledge aided, abetted or procured the said Ball to make such entries in such reports.

To refusal of the court to give said instruction, defendant at the time, and in the presence and hearing of the jury, duly saved his exception.

Defendant's Refused Instruction (u)

If you believe from the evidence that the said Ball made the alleged false entries in said reports without aid, counsel or procurement from the defendant Boone, then you should acquit the defendant, even though you believe that said entries were false and made for the purposes mentioned in the indictment.

To refusal of the court to give said instruction, defendant at the time, and in the presence and hearing of the jury, duly saved his exception.

FORM NO. 46**Motion for a New Trial.**

Boone *v.* United States, 257 Fed. 963 (C. C. A. 8th Cir.).

(Title of Cause.)

Comes the defendant, T. W. M. Boone, and moves the court for a new trial, and for cause thereof says:

1. The verdict of the jury is contrary to law.
2. The verdict is contrary to the evidence.
3. There was no evidence whatever to support a verdict on the ninth count.
4. The court erred in not granting the prayer of the defendant for a peremptory instruction on the ninth count.
5. The defendant further says that in the trial of this case upon the nine counts the Government relied upon the fact that the defendant was furnished daily with skeleton statements showing, among other things, the cash in bank, and that he was familiar with the books of the bank, and from said statements was acquainted with the amount of cash on hand and could have ascertained that the lawful money reserve made in the reports referred to in the fifth, sixth, seventh, eighth and ninth counts was false; That the defendant's evidence tended to prove that the defendant did not compare said skeleton statements with the books and was not familiar therewith; That the skeleton statement furnished him, of the condition of business of June 23, 1915, introduced by the Government, contained a statement of the amount of cash, which was the amount shown on the books after a falsification had been made of three items as shown by the Government, which

increased both the cash and the lawful money reserve in the sum of \$20,000.00; That no testimony in regard to the ninth count predicated upon furnishing the defendant with said skeleton statements would have enabled him to have detected the falsification of the record, as the statement furnished him was evidently made after the falsification had been made.

The defendant further states that the lawful money reserve was not at the time of the statement of the 23rd of June, 1915, seriously impaired, and was larger, as shown by the testimony of Mr. Bennett, than the reports showed the bank was in the habit of carrying, and there was an excess of over \$6000.00 of cash in the vault above the lawful money reserve before the falsification of the records; That under the testimony of Ball there was an understanding between him and the defendant Boone, which was denied by the defendant Boone, that when it was necessary the lawful money reserve should be falsely reported. The defendant says that even under the testimony of Ball there was no occasion for falsifying the amount of lawful money reserve in this report.

The defendant further says that in addition to the circumstances above stated, the principal testimony relied upon by the Government was the testimony of P. A. Ball: That said Ball testified in substance that there was an agreement between him and the defendant Boone that when necessary in order to save the bank from receivership the lawful money reserve should be falsified, and the said Ball said that he recalled two instances when the said Boone directed him to falsify the records so as to falsely report the lawful money reserve; and said Ball said he could recall no other instance except two, which were falsely entering the note of H. M. Bylesby & Company as paid when in fact it was not paid, and which said false entry was made the basis for the sixth count of the indictment herein, and the similar entry of the note of A. D. S. Bonte as paid when in fact it was not paid, which is the basis of count eight herein: That the evidence of Ball, if believed, would at the utmost have tended to connect said Boone with a conscious participation in the falsification of the report made a basis of the sixth and eighth counts: That said defendant Boone positively and emphatically denied that any such understanding existed, and denied explicitly that he directed or

knew of the falsification of the record in regard to the notes of H. M. Byllesby & Company or A. D. S. Bonte: That the evidence of Ball wholly fails to connect the defendant with any conscious participation in the falsification of the records of any report other than the two instances above referred to, and the defendant states that he was acquitted on counts six and eight, and that the jury in acquitting him on said counts necessarily found that the said Ball committed perjury in regard to the alleged direction of the defendant Boone and the falsification of the records in so far as the Byllesby and Bonte notes were concerned. That the testimony of the said Ball as to any conscious participation of this defendant or any other falsification of the records in the reports to the Comptroller are too vague, uncertain and indefinite to base a conviction upon, and in view of the repudiation by the jury of the testimony of Ball as to the sixth and eighth counts, the defendant submits to the court that he cannot in justice to him permit a verdict to stand based upon testimony thus discredited.

6. The defendant further states that the defendant Ball was called as a witness to testify for the Government, and thereupon claimed his privilege against incriminating himself:

That thereafter, and before the convening of the court the next morning, the said Ball had a conference with the District Attorney, and after conferring with him voluntarily consented to testify and withdrew his privilege after being told by the court that he would not be compelled to testify in this case: That while this defendant does not charge that the District Attorney promised Ball that he would recommend the minimum punishment, and dismiss three other cases which were pending against him, yet the said Ball evidently believed that the District Attorney would do so, and for that reason withdrew his privilege and volunteered his testimony: That after the verdict was rendered in this case, and the said Ball was brought before the court for sentence, the District Attorney did recommend to the court that the minimum punishment be imposed upon him and did state that he intended to recommend to the department of justice that the other cases against him be not pressed: That this defendant's counsel urged in an argument before the jury that the said Ball was testifying falsely in the hope of receiving lenient treatment at the hands

of the District Attorney and from the department of justice in regard to punishment in this case and in regard to the prosecution of the other cases: That the fact that the District Attorney, after the verdict herein was rendered, made the aforesaid recommendation of leniency to the court would have strongly tended to satisfy the minds of the jury that Ball was testifying falsely in the hope of such leniency rather than telling the truth in regard to said transactions, and that such later proceedings are in the nature of newly discovered evidence and tend to throw light upon the action of said Ball and would have had great weight with the jury in weighing his testimony.

7. That matters occurred in said trial prejudicial to the defendant before the jury and prevented him having a fair and impartial trial by the jury in this; — that the court refused to grant this defendant a severance from his co-defendants Ball, Dowd and Dickenson and he was put on trial jointly with Ball and Dowd: That in exercising challenges to the jury he was compelled to act in concert with them in selecting the jury: That immediately after selecting the jury Ball and Dowd pleaded guilty to one count each in this indictment, and Ball was made a witness for the Government. That it became necessary in the progress of the trial for the jury to learn of pleas of guilty, and the defendant Dickenson was brought into open court before the jury and pleaded guilty to one count of this indictment in their presence: That it was brought to the attention of the jury that each of these co-defendants had pleaded guilty during the progress of the trial; That these facts tended to prejudice this defendant before the jury and cause it to render a verdict as a result of passion and prejudice and not upon the law and the evidence.

8. That there has been justly great bitterness of feeling against the officers and employees who looted the American National Bank and caused its failure, and the public had not been informed of the facts until this trial, and many people, particularly depositors, had been under the mistaken belief that this defendant, jointly indicted with Ball, Dowd and Dickenson, was a party to the misapplication of the funds of the bank, and that belief engendered great bitterness of feeling against him. That in the trial of this

case and in the proceedings before the court when Ball, Dowd and Dickenson were sentenced, it was developed that the Government did not claim any of the money of the bank was embezzled or stolen by this defendant, but, on the contrary, traced to the other defendants the money abstracted from the bank. That the defendant was put to trial with this intense feeling against him and his trial was attended largely by the many depositors of the bank, and he was surrounded throughout the trial by an atmosphere of passion and prejudice against him, which fact found reflection in the verdict against him.

9. That some of the jurors were biased and prejudiced against the defendant, although they did not disclose it upon their *voir dire*.

10. That the District Attorney in stating the case to the jury made statements that were prejudicial to the defendant, in that he stated in substance that the Government would prove that the defendant Boone had unlawfully obtained money from the bank for various corporations in which he was interested, which the District Attorney called paper corporations, and he detailed various so called instances of alleged abstraction of money in reprehensible ways. That the District Attorney also told a pathetic story of an aged widow who trusted the defendant and in reliance upon his friendship and statements made to her deposited money in the bank in February, 1916, and on account of such faith in statements her money was lost. This latter statement the District Attorney offered testimony upon and such testimony would have been contradicted by the defendant, and a foreign issue would have been raised prejudicial to him. That it became necessary for the defendant's counsel in answering opening statement of the District Attorney to answer as to the various facts which the District Attorney alleged he would prove in regard to various and sundry business transactions of the defendant, although the defendant's counsel stated that he did not believe that such transactions would be admissible in this case. That had the defendant not objected to the offer of such testimony there would have been brought before the jury foreign issues and issues prejudicial to the defendant. That it became necessary for him to object to such testimony, and the court

properly ruled that the same was incompetent in this case, but the effect of the statement of the District Attorney was highly inflammatory against the defendant, and when the defendant, in order to prevent the false and foreign issues being brought in the case, objected to such testimony, the jury was prejudiced against the defendant on account thereof. That the statements of the District Attorney carried weight to the jury and made the jury believe that the defendant had through fraudulent and reprehensible conduct abstracted money from the bank and imposed upon trusting friends. That said matters were not within the issues of this case and such statements had a tendency to inflame the jury against the defendant, and did prevent him from obtaining a fair and impartial trial at their hands.

11. The court erred in overruling defendant's demurrer to the indictment and to each count thereof, the defendant having demurred to each count separately, and having saved his separate and several exceptions to the action of the court in overruling his demurrer to said indictment, and to each count thereof.

12. The court erred in overruling defendant's motion to quash said indictment and each count thereof, defendant having moved to quash each count of the indictment separately and severally, and having saved his separate and several exceptions to the action of the court in overruling the said motion.

13. The court erred in permitting the Government to introduce in evidence the reports of said association purporting to have been made to the Comptroller of the Currency, and each or any of the same. There was no allegation in the indictment that said reports were made to the Comptroller of the Currency, but that the same purported to have been so made.

14. The court erred in permitting the Government to introduce in evidence said reports of the condition of said bank, or either of them, for the reason that said reports were not sufficiently identified, and for the further reason that there was no showing that they were made in accordance with law or in form or manner required by statute.

15. The court erred in admitting in evidence over the objection of the defendant the testimony of the witness, H. L. Machen, in substance to the effect that he had warned the defendant at a

directors' meeting of said bank, and personally had overdrafts of the defendant, his daughter, or others, that were improper.

16. The court erred in admitting in evidence the testimony of the witness H. L. Machen, over the objection of the defendant, as to conversations between said witness and the Board of Directors and Boone at the examinations of said Bank in September and December, 1915, or at either of said times, and as to what took place between the witness and defendant and Board of Directors at said meetings.

17. The court erred in permitting the said witness Machen to testify over the objections of the defendant as to a conversation had by said witness and Boone in regard to loans made by the bank to corporations in which the defendant Boone was interested, said conversation purporting to have taken place in September and December, 1915. And the court erred in permitting said witness to testify as to conversations between himself and the defendant at such times as to defendant's overdrafts in said bank. And the court erred in permitting said witness to testify as to the contents of letters that had passed between the Board of Directors of said bank and the Comptroller of the Currency over the objection of the defendant, the defendant objecting on the ground that said letters were the best evidence, and on the further ground that the testimony was irrelevant and immaterial. The court also erred in overruling the defendant's motion to withdraw said testimony, and each part thereof from the consideration of the jury, separate exceptions having been saved to the action of the court thereon.

18. The court erred in permitting the Government to introduce in evidence the report alleged to have been made by said bank to the Comptroller of the Currency showing the financial condition thereof dated August —, 1913, because said report was not made by P. A. Ball, as alleged in the indictment.

19. The court erred in permitting the witness, J. D. Abrahms, to testify that reports of said bank to the Comptroller of the Currency were in the form prescribed by said Comptroller for the reason that testimony showed that said witness had no knowledge upon the subject and was not qualified to speak as an expert thereon.

20. The court erred in permitting the witness, W. N. Bennett, to testify as to the amount of the overdrafts of the defendant Boone and the other officers of the bank at times other than those mentioned in the indictment. And the court erred in permitting said witness to testify as to the overdrafts of said Boone or the other officers, or either of said officers, over a period of many years, or at any other time except such times as are mentioned in the various counts of said indictment.

21. The court erred in permitting the Government to introduce in evidence the officers' slips showing the condition of the bank at date of call mentioned in count five of the indictment, because such slips were copies found only in the desk of cashier Ball and there is no evidence showing that the defendant ever had any knowledge of the contents of said slips.

22. The court erred in receiving in evidence the proceedings of the Board of Directors of said bank at the meeting of July 2, 1913, as identified by the witness S. E. Donoghue.

23. The court erred in permitting the minutes of the meeting of the Board of Directors of said bank of date August 6, 1913, to be introduced in evidence, as identified by said witness Donoghue.

24. The court erred in permitting the introduction in evidence of the minutes of the meeting of the Board of Directors of said bank of date October 1, 1914, to be read in evidence, as identified by said witness Donoghue.

25. The court erred in permitting the Government to introduce in evidence the minutes of the meeting of the Board of Directors of said bank of March 4, 1914, as identified by said witness Donoghue.

26. The court erred in permitting the Government to introduce in evidence the minutes of the meeting of the Board of Directors of said bank of date June 3, 1914, as identified by said witness Donoghue.

27. The court erred in permitting the Government to introduce in evidence the minutes of the meeting of the Board of Directors of said bank of date February 3, 1915, as identified by said witness Donoghue.

28. The court erred in permitting the Government to introduce

in evidence the minutes of the meeting of the Board of Directors of February 27, 1915, as identified by said witness Donoghue.

29. The court erred in permitting the Government to introduce in evidence the minutes of the meeting of the Board of Directors of February 1, 1916, as identified by said witness Donoghue.

30. The court erred in permitting the Government to introduce in evidence the minutes of the meeting of the Board of Directors of said bank of March, 1916, as identified by said witness Donoghue.

31. The court erred in permitting the Government to introduce copies of the alleged reports of the bank to the Comptroller on the ground that said certificate was not sufficient, and that said copies or the originals were not sufficiently identified.

32. The court erred in refusing to instruct the jury to return a verdict of not guilty on the ninth count of said indictment, for the reason that said defendant was indicted as an accessory to the alleged principal Ball, and at the time of the trial of the defendant on said count the Government had dismissed the charge in said count as to the said defendant Ball.

The court should grant the defendant a new trial for each and every one of the objections made to each and every instruction wherein defendant made objection thereto and which were by the court overruled, and to which exceptions were at the time made in the presence of the jury.

The court should grant a new trial for the refusal of the court to give each and every instruction asked for by defendant which was refused by the court, and for the modification of each instruction asked when instructions asked were modified by the court, and to the refusal to the giving of each of said instructions or to the modification of each instruction defendant at the time objected and saved his exceptions in the presence of the jury.

T. W. M. BOONE,

By J. H. EVANS & SON,

By HILL, FITZHUGH & BRIZZOLARA,

His Attorneys.

Note: While counsel did not prevail, the above form has been selected by the author as an example of good pleading.

AMENDMENT TO MOTION FOR NEW TRIAL [FORM 47

FORM NO. 47

Amendment to Motion for New Trial.

Boone *v.* United States, 257 Fed. 963 (C. C. A. 8th Cir.).

(Title of Cause.)

Comes the defendant and asks leave of the Court to file this amendment to his motion for new trial; and he sets up the following additional reasons for the court granting a new trial herein: 1st, That since the trial in this case he has had his account in the American National Bank as Guardian balanced and it was about \$460.00 less than his books show; that he called upon the Receiver of the Bank in regard thereto discovered on page 144 of the Inactive Ledger, wherein his account was kept, July 8, 1915 an entry, and immediately thereafter is an erasure of entries, both debit and credit; that the erasure of debit shows that there was not more than \$10.00; the erasure of credit shows that there was not less than \$100.00 and not more than \$1000.00; that the discovery of said erasures on his account shows that funds were abstracted from said account; that on the trial of this case he testified that he believed funds had been abstracted from his account, but had no evidence thereof; that this evidence proved abstraction from his guardian account, and will have a strong tendency to sustain testimony of this defendant, and to discredit the testimony of P. A. Ball; that prior to the trial he had asked that his individual account be balanced and was informed that his checks were in the custody of the District Attorney; for that reason he did not call for the balancing of his guardian account, as he believed that it would not be furnished to him; that the fact herein stated was discovered after the trial and he could not have discovered it before the trial.

Defendant states that the Jury in this case was kept at the Goldman Hotel and while there constantly read the Fort Smith papers, to wit, the Southwest American and the Fort Smith Times Record; that said papers contained long accounts of the trial and stated many alleged facts which were not introduced in the evidence and expressed opinions as to the weight of evidence and in many divers ways presented to the jury public sentiment thereto; and were highly prejudicial to the defendant.

The defendant asks that the files of the papers be received as a part of this motion.

J. H. EVANS & SON &
HILL, FITZHUGH & BRIZZOLARA,
(Attorney) for Defendant.

FORM NO. 48

Response to Motion for New Trial.

(Boone *v.* United States, 257 Fed. 963 (C. C. A. 8th Cir.).
(Title of Cause.)

Western District of Arkansas,
Fort Smith Division

I, J. V. Bourland, state that I am The United States Attorney in and for the Western District of Arkansas, and as such represented the Government upon the trial of T. W. M. Boone, upon indictment No. 1390, in September, 1916, when he was convicted upon the 9th count of aiding Ball, Cashier of the American National Bank of Ft. Smith, Arkansas, in making certain false entries in a report of said Bank to the Comptroller of the Currency.

I had read the affidavit of E. D. Bedwell, which has been submitted by the defendant in support of his motion for new trial. It is not true, as stated by Bedwell, that depositors and their relatives and (sympathisers) had created the feeling of prejudice which affiant so graphically depicts against defendant Boone, at the time of the trial. It is true that the trial was largely attended, but not more than was usual where men of social prominence have been arraigned. Depositors generally were very generally in sympathy with the prosecution, unless affiant himself be excepted, but this disposition upon the part of the depositors in no way affected or came to the knowledge of the jury. I feel absolutely certain that the jury knew absolutely nothing as to the state of opinion; divided, as is generally the case, some for and some against the defendants.

I wish to correct an argument of affiant Bedwell, whereby he seems to wish to get into the record a statement, which is misleading as to the evidence offered upon the part of The Government.

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Affiant says in the second paragraph of his affidavit that "Until Boone testified and it developed in the trial that the government traced the money which had been abstracted to the other defendants and not to him, there was no discrimination in the strong feeling for the conviction of all the defendants." There was no such development at the trial; nor, in my opinion, did the testimony affect public sentiment materially, unless when Boone said, though president of the bank for many years, he knew practically nothing of its accounts, but trusted it almost wholly to the other defendants, people generally expressed the belief that Boone was insincere in his evidence as to that; but I feel sure that even this phase of public opinion was wholly unknown to the jury.

It certainly is not true that the jury was "brought here, under such surroundings, as affiant erroneously states"; nor is it true that the jury could not have failed to have knowledge of public sentiment, nor is it true, though affiant so believes, that Boone did not obtain a fair and impartial trial, owing to any such surroundings. Affiant, himself a depositor, as he swears, and who lost money on account of the failure of the Bank, impeaches by his affidavit the administration of justice in this court; and he does this upon behalf of Boone; evidently if he, a depositor in attendance upon the trial, as he says, could work himself into such a state of favor to Boone, I am warranted in assuming as I do, upon my oath, that there were many more in attendance upon the trial who were similarly favorable to Boone, and that public sentiment, though none of it reached the jury, was at least divided.

I wish to go on record in this affidavit as saying, after mature consideration, that the jury which tried Boone was above the average for intelligence; most of them resided at considerable distance from Ft. Smith; none of them lived in the City. Every precaution had been taken to select the very best citizens of the District upon the jury; and when the jury was selected and sworn, the court, upon my suggestion, ordered them kept together throughout the trial, under the charge of a special deputy Marshal, to the end that nothing might unduly influence their deliberations; and so carefully did the Marshals in charge of the jury observe their duty in this respect, that at no time did the jury separate, until

the verdict was delivered into the court. And at all times during the trial, which occupied some seven or eight days, did the jury mingle with the visitors in the court room; but at adjournments, the court ordered visitors to remain seated until the jury should leave the court room, and at other times the court would order the jury to remain seated until the visitors should leave, and in either case the jury were not brought into contact with visitors in any way; and the court instructed the jury concerning their duty to keep themselves from newspapers or other influences which might have a tendency to affect their minds as to the guilt or innocence of the defendant; and also instructed the Marshal, as I am informed, to the same end.

In connection with the grounds for new trial alleged by defendant, namely, of alleged newly discovered evidence, to the effect that since the trial he has discovered that his own personal account upon the books of the American National Bank had been altered, that false entries had been made therein, and more of like import; while I do not conceive such matters as relevant, yet I wish to say as showing want of diligence, that some eight or ten days before the trial I filed a motion in this case wherein I proffered to submit all the books, records, files, checks, receipts, and other papers appertaining to the affairs of the Bank and which the Government designed to use in evidence, for the inspection and examination of all the defendants, including Boone, in this case; each was present when said motion was filed and said tenor made, and each accepted same, in accordance with the terms of said motion; and in accordance therewith thereafter had free access to all of said books &c. in the private room of the office of the United States Attorney for and during at least eight or nine days before the said trial; and the defendant Boone frequently during that time, with his Attorney and a special accountant in his employ, examined the said books &c., without let or hindrance in any way. The personal account of the said Boone with all his paid checks were there, as he well knew, and he had every possible opportunity to examine them fully and completely; and I am of the impression from seeing him there, with his Attorney and said special accountant, and seeing the individual ledger upon which said account was, being handled by them, that said

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Boone did then and there fully examine his said account as fully as he cared to examine it. In five of the counts in said indictment it is charged that he aided Ball in making false entries in said reports concerning overdrafts; of all said officers in some counts, and of Boone's overdraft in some, and of all of said officers' overdrafts in other counts; and Boone knew that his account therefore was material evidence, and would be used against him at the trial; where indeed it was shown that his said individual account was almost continuously overdrawn in larger or smaller sums during the years 1913, 1914, 1915 and down to the time the Bank closed, March 25, 1916; the reading of which overdrafts in evidence required the greater portion of an evening during said trial; and so, there is every reason to state that Boone well knew, long before said trial, that it was important for him to examine his said account, and that he could, if he wished to, examine it before the trial. And I wish to say in this connection that it was not, and is not, true that I at any time prior to the trial had in my possession or under my control, except during the time just mentioned when I proffered said books and records for examinations by defendant, either Boone's account or his paid checks, so in any way to hinder his examining them before the trial. They were in the Bank, as I am advised; Boone nor his Attorneys at any time ever asked of me to examine them, nor asked me to consent that the Receiver of the Bank or Special Bank accountants of the Department of Justice allow him, Boone, or his Attorneys, to examine said account and paid checks. And, while in this motion, Boone fails to state who told him that said Account and paid checks were in my possession, certain it is that Boone did not follow up such information to know; and had he intimated that he wished to see his personal account and paid checks or either, he must have known that I should have used my best efforts to find them at the Bank for him; and, if there, as they most likely were, for safe keeping, at the instance of Bennett, Special Bank Accountant of the Department of Justice, I should not have hesitated, as Boone must have fully believed, to procure him access to them, under some fair and reasonable terms, to him as well as to The Government.

As to allegations contained in the motion for new trial con-

cerning the refusal of Ball to testify in the first instance upon behalf of the Government, claiming his privileges, upon the ground that it might prejudice him in any trials upon other indictments still pending against him, I wish to state that Ball and Boone both knew the express policy of the Government in these cases. That is to say, both of them knew that I as United States Attorney had expressly declared many weeks before the trial, upon the occasion of the arguing of demurrs to all the indictments, which the record will show as to date, that I did not intend to ask for but one conviction, where a defendant pleaded guilty or was convicted by a jury upon any single count. All the charges, growing as they have, out of alleged violations of section 5209 RS, I felt, and so stated, that punishment upon a single count upon any of the indictments would satisfy justice, and that I would not try any other counts, where the party entered upon his term of imprisonment, as the court might fix it. Ball knew all this; and I was surprised when at the trial he refused to testify, and I asked the court to allow me to confer with him. I did so. In that conversation I told Ball simply that I could compel him to testify. I did not tell him that I would dismiss a single count or indictment against him; but told him that the court had ruled in this case, at the instance of Boone and his Attorneys, that I could not prove against Boone the latter's criminal acts in willfully misapplying the moneys, funds and credits of the Bank, as charged in the other indictments; and that therefore this ruling would equally apply to similar charges which are made in those other indictments against him, Ball; and that if he would give me no further trouble I would ask the court to assure him on the stand that he would not be required to testify to matters which relate to the charges made in the other indictments; and so far as the remaining counts in the present indictment — 1390 — Ball having pleaded guilty to one count he knew that the other eight would be dismissed. I did not promise him the least leniency; indeed, the proof was so undoubted against all of the defendants, including Boone, that the Government felt not the slightest need to offer inducements, even if proper to offer them. Ball had, in my deliberate judgment, not the slightest expectation of lenience in any direction from me; except that leniency, possibly, which

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any one may hope for in a government which tempers justice with mercy; in a word, he expected, in my opinion, nothing from me from the fact that he should testify in the Boone case. I feel that Ball, at the time, knew me well enough to be convinced that whatever his disposition for or against Boone in his evidence, could not, and would not, honorably be visited upon him by me in any recommendation as to sentence; and while I did afterwards, as is recited in the motion of the defendant, recommend to the court a sentence of five years, while the court, nevertheless, fixed it at eight years as to Ball; I also at the same time made a similar recommendation as to Dowd and Dickenson, who were jointly indicted with Ball and Boone, and the court at the same time similarly disregarded my recommendation and fixed the sentence of each, Dowd and Dickenson, at eight years; I do not here hesitate to say that the policy there pursued by me I shall follow in the case of Boone; though Boone forced a trial at great expense, and though he, in my judgment, got much more than all the others of the funds of the Bank in violation of section 5209, and being President of the Bank, and, as such, owing a duty greater, possibly, than the others, is morally if not legally more guilty than either of the others.

I wish also to go on record in refutation of the statement contained in the motion for new trial, by way of argument, that "the principal testimony relied on by the Government was that of Ball." Upon the contrary, while Ball testified as a witness for the Government, it was but cumulative, and it became and was a serious question of policy whether Ball should be used at all. He was a party in crime with Boone; he had pleaded guilty, and all such testimony is viewed with suspicion. All the circumstances showed beyond a reasonable doubt that Boone and these other defendants, including Ball, had committed the nine crimes charged in this indictment. Boone, long president of the Bank, had given daily attention to its affairs, was minutely cognizant of its principal accounts. Many months before the Bank was closed he knew of its insolvent condition, due to embezzlements, abstractions and willful misapplication of its funds in the approximately aggregate sum of \$210,000.00, more than half of which had been his own willful misapplication. The Minutes of the Board of

Directors, signed by Boone as President, and by Ball as cashier; letters from, and to, the Comptroller of the Currency there shown; the books, records, files and papers of the Bank; Boone's own personal account, overdrawn as stated, for more than three years, practically all the time, in sums ranging from a few dollars to two or three thousand; all these things and many more of an incriminatory kind which had been offered in evidence, in connection with the several successive reports to the Comptroller, signed by Ball and Boone; in which were repeated false entries as to overdrafts of Boone and the other officers of the Bank, and other false entries as to the lawful money reserve in the Bank; daily skeleton statements during all this time were furnished to Boone and Ball by bookkeepers of the Bank, showing the principal accounts of the Bank from the General Ledger, and advising them at times of actual alterations and changes in connection with the balances of those accounts, in accordance with an obvious plan which they had inaugurated to aid them in falsifying the said reports to the Comptroller; all this in evidence, I say, was the principal evidence; and but for the opportunity it might have given defendant to have made some question finally before the jury as to why we did not use the evidence of Ball, I was disposed to question the real need or policy of making a witness of Ball for the Government. The defendant indeed made objection to Government use of Ball, as also of Dowd and Dickenson as witnesses, and the two latter I elected not to use at all. Moreover, the evidence of Ball was almost as valuable to Boone as to the Government; for, upon the issues on the first five counts of the indictment, Ball in his evidence tended somewhat to sustain Boone's contention, namely, that he did not know as to the false entries concerning overdrafts of himself and the other officers; for, upon those questions Ball said he could not say as to Boone's knowledge; and this small circumstance convinced me that Ball was seeking to search his memory and, although under great embarrassment on account of his own confessed guilt, was guided by the truth, as he recalled it; and so, when he testified as to an existing understanding between Boone and himself, that the Bank's financial affairs were in a bad way and that he, Ball, should have Dowd and Dickenson, the two Assistant Cashiers to fix the accounts so as to boost the Lawful

RESPONSE TO MOTION FOR NEW TRIAL [FORM 48]

money reserve, in anticipation, from time to time of a call from the comptroller, which was accordingly done, within Boone's knowledge each time. Ball's evidence carried conviction in my judgment of its sincerity and truth, firmly corroborating and confirming all the circumstances which already so firmly showed the guilt of Boone, as charged in the indictment.

With regard to ground numbered 10 the motion for new trial, I desire the record to show that I did not, in my judgment or purpose, make statements in the opening statement of the case to the jury, which were unwarranted or that were prejudicial to the rights of Boone.

It is true that I made statements at that time based upon voluminous evidence which is in the possession of the Government, showing the extent of several embezzlements, abstractions and willful misapplications of the moneys funds and credits of the Bank, from time to time, by the defendants, jointly charged, Boone, Ball, Dowd and Dickenson; all for the purpose of showing, in connection with other evidence, motive and intent upon the part of Ball and Boone, in making and aiding in making, as charged false entries in the several reports to the Comptroller, which are named in the indictment; so, therefore in that statement to the jury, I did relate, but simply and directly, how on one or more occasions, Boone deceived certain depositors, amongst them a Mrs. Dr. G. W. Smith, as to the solvency of the Bank, a short time before it actually failed, and when Boone was consenting that Ball try to borrow money in order to keep it going; and I did show in my statement that, in that way, Boone got Mrs. Smith to deposit some \$2800.00 in gold; and that immediately, on the 24th of March 1916, the Bank was closed by a Bank Examiner. It is not true that my statement to the jury was sensationaly made; it was but earnestly and truthfully made, as warranted by evidence then, and still, in the hands of the government; and, upon the trial of the cause I proceeded to make proof accordingly. The next morning after the jury had been impaneled Ball and Dowd agreed to enter a plea of guilty to a certain count each and the trial as to them was discontinued, but proceeded as to Boone; Dickenson having long before agreed to enter his plea of guilty; and so, in the further trial of Boone,

the government proceeded to show the peculations of the said defendants; those chargeable to Ball, Dowd and Dickenson being first in order as arranged on my trial brief, and first in order of investigation and discovery by experts of the Government and the Bank examiner Mr. Machen, who closed the bank; and accordingly, as I have said, the evidence of the government proceeded somewhat chronologically, or in the order in which experts of the government had developed the wholesale looting of the bank by all these officers; and, inasmuch as Mr. Machen was the first to make investigation, and was the discoverer first in point of time of the immediate and obvious discrepancies of (each) deficiencies, he soon uncovered that Dickenson had for some time held as cash various items and checks signed by Ball and Dowd, and some by Dickenson, and various cash memoranda which Dickenson had made showing the actual peculations at that time of Ball, Dowd and Dickenson; proof of these naturally came first in order before the jury; whereby it was shown that Ball had embezzled in that way approximately \$24,076.87, Dowd, \$34,000.00 and Dickenson \$64,201.06; while there were other embezzlements by these persons, which were shown, and to be shown by other evidence, and other peculations and willful misapplications by Boone in a much larger sum than the amount above named as embezzled by either of the other defendants; and while in the introduction of the evidence so showing the embezzlements of Ball, Dowd and Dickenson, as manifesting intent in the making of false reports by Ball, and showing the circumstances which carried knowledge to him of the peculations of Dowd and Dickenson, defendant Boone and his Attorneys did not object as irrelevant or incompetent; and while upon the argument of the case to the jury, Boone's Attorneys argued with much force the undeniable proposition that Ball's peculations as above shown, were his motive and intent in making the false entries as charged; yet, during the introduction of evidence by the government, following a plain policy, the government undertook to show by evidence how Boone also had willfully misapplied, from time to time moneys, funds and credits of the Bank in the aggregate sum of approximately \$110,000.00 as also showing his co-motive for aiding in so making false entries in the reports to the Comptroller, and offered to

show by Mrs. Dr. G. W. Smith how Boone had deceived her and got her money upon deposit as stated when he knew the Bank to be insolvent, indeed when he was trying to liquidate its affairs, defendant then objected to such evidence as applied to Boone as irrelevant and incompetent; and his objection was sustained by the court; so that in argument to the jury defendant's attorneys referred forcibly to the failure of the government to prove what had been stated would be shown, as to allege willful misapplications of Boone; and therefore, such evidence being as a matter of law excluded, the only offset to defendant's argument which could be made by the Government was based upon the Indictments in the other cases which defendant himself had introduced in evidence in this case to show the interest of Ball and to discredit his testimony; for these same indictments showed that Boone is also charged with wilful misapplication of large sums, and that therefore the indictments should be considered in the same way as affecting the testimony of Boone, who had testified in his own behalf.

J. V. BOURLAND.

Sworn to and subscribed before me this the 30 day of October 1916.

Wm. S. WELLSHEAR,
Clerk.

FORM NO. 49

Charge to Jury—Conspiracy to Violate National Banking Act.

Chadwick *v.* United States, 141 Fed. 225 (C. C. A. 6th Cir.).

The following is the full charge given by Taylor, District Judge, to the jury:

"The testimony in this case having been completed, it now becomes my duty to define the law applicable to the facts given in evidence, and to instruct you as to the rules of law which you are to consider, and by which you are to be controlled, in weighing and construing the testimony. It is for you, and for you alone, to determine what the facts are. It is for the court, and the court alone, to define the law by which these facts are to be applied to the indictment in this case. If it should seem to you, at any time during this charge, that the court has an opinion respecting

what may or may not be a fact in this case, you will still remember that the court's conclusion is in no sense to weigh with you, or control you, in your finding and determination of what the facts are. The Congress of the United States, from time to time, has seen fit to enact certain laws intended to aid in the honest and efficient administration of national banks. While it is not necessary that I should say anything to you respecting the need or the merit of any particular law passed for that purpose, yet I ought to say to you, and do say, that legislation of that general character is highly meritorious, and manifestly needful. We are so accustomed to repose confidence in banks, especially in those banks organized under federal laws, and, to a certain extent, supervised by federal officials, that, if stringent legislation looking to the protection of stockholders and depositors was not enacted and enforced, the property of innocent persons would be put in great jeopardy, and the confidence of the public in such institutions would be greatly impaired. No less important than this is the regard which the law has for the safety and liberty of individuals; and this is manifest when we consider the safeguards which it throws around those who are charged with crime. It is your duty to consider at once the necessity of enforcing the laws of the country and of giving full protection to persons charged with offenses against those laws. These considerations should cause you to give most careful attention to your duties in this case, to the end that, on the one hand, if the defendant be guilty as charged, these salutary laws may be enforced; and, on the other hand, that she be not found guilty unless, by proof satisfactory to the law, you shall so find her.

"The defendant in this case is presumed to be innocent until the contrary is proved; and this presumption, you will bear in mind, remains with the defendant as her right, until, upon all the testimony in the case, the presumption is overcome and her guilt is proved by testimony which satisfies you, beyond a reasonable doubt that she is guilty. I will define further on in my charge what is meant by reasonable doubt. In the effort by Congress to bring about an honest administration of the laws regulating national banks, two acts, which now concern us, have been passed; and upon them, and what is known as the 'conspiracy statute',

this indictment has been based. These acts are section 5208, the act of July 12, 1882, and section 5440.

"Section 5208 is as follows: 'It shall be unlawful for any officer, clerk or agent of any national banking association to certify any check drawn upon the association unless the person or company drawing the check has on deposit with the association, at the time such check is certified, an amount of money equal to the amount specified in such check,' etc. (U. S. Comp. St. 1901, p. 3497.)

"Act July 12, 1882, c. 290, § 13, 22 Stat. 166 (U. S. Comp. St. 1901, p. 3497), is as follows: 'That any officer, clerk or agent of any national-banking association who shall willfully violate the provisions of an act entitled "An act in reference to certifying checks by national banks" approved March third, eighteen hundred and sixty-nine, being section fifty-two hundred and eight of the Revised Statutes of the United States, or who shall resort to any device, or receive any fictitious obligation, direct or collateral, in order to evade the provisions thereof, or who shall certify checks before the amount thereof shall have been regularly entered to the credit of the dealer upon the books of the banking association, shall be deemed guilty of a misdemeanor, and shall, on conviction thereof,' etc.

"Section 5440 is as follows: 'If two or more persons conspire either to commit any offense against the United States or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy all the parties to such conspiracy shall be liable to a penalty,' etc. (U. S. Comp. St. 1901, p. 3676.)

"The indictment in this case charges the defendant, in 16 counts, with violating section 5440, which I will call the 'conspiracy statute' and charges this violation in two different forms — that is to say, 8 different checks are the subjects of this indictment, and as to each check conspiracy is charged against the defendant, first, in unlawfully conspiring with another to certify a check, by an officer of the bank, when an amount of money equal to the amount specified in the check was not on deposit to the credit of the person drawing the check; and, second, in unlawfully conspiring with another to certify a check, by an officer of the bank, before the amount of the check had been regularly entered upon the books

of the bank to the credit of the drawer of the check. Counts numbered 1, 3, 5, 7, 9, 11, 13 and 15 makes this charge respecting eight different checks that they were certified when funds were not on deposit; and the remaining counts 2, 4, 6, 8, 10, 12, 14 and 16 based upon the charge that the amount of the check had not been regularly entered upon the books of the bank to the credit of the maker. We thus see that the odd-numbered counts relate to the deposit of funds to the credit of the drawer, and the even-numbered counts relate to the regular entry, on the books of the bank, of the amounts of such deposits, to the credit of the drawer. To put it otherwise, the odd-numbered counts charge a conspiracy to commit the crime defined by the law which forbids the certification of a check unless the person drawing the check has on deposit with the bank, at the time the check is certified, an amount of money equal to the amount of the check; and the even-numbered counts charge a conspiracy to commit the crime defined in the act of July 12, 1882, which forbids the certification of a check before the amount thereof shall have been regularly entered to the credit of the drawer of the check.

"I trust, gentlemen of the jury, that you will not handicap your free consideration of this case by any apprehension that it will be difficult for you to understand it, or to apply the facts as you find them to the law as I shall give it to you. I think that you understand the case, and, if you do not, I am sure that it will be clear to you when such additional light as is needed is given to you by this charge. You must remember that you are to look at the facts, and apply the law to them as given you by the court, exactly as you would look at other important concerns affecting yourselves. You should approach the consideration of the whole case with a confidence that you will arrive at a conclusion satisfactory to your judgment and your conscience, precisely as you are satisfied that you will arrive at a like conclusion in any important matter of your own, after you have given to it full and careful consideration.

"There are no distinctions to be drawn in this case so fine that the ordinary mind cannot apprehend them, nor are there any mysterious processes, either of reasoning or of legal procedure, which you need fear will cloud your inquiry, or interfere with

your arriving at a perfectly intelligent conclusion. The questions here are practical questions for you to decide, and all that is needed is that you give your very best attention to this consideration. Let me impress upon you, at the outset, that the defendant in this case is presumed to be innocent until her guilt is established by proof which satisfies you, beyond a reasonable doubt, that she is guilty. This presumption abides with her all through the case, until it is, as I have said, removed by the proof; and every material element necessary to make up the crime of conspiracy in this case must be established by like proof, satisfying you, beyond a reasonable doubt, of its existence.

"A reasonable doubt is not mere possible doubt, because everything relating to human affairs, and depending upon moral evidence, is open to some possible or imaginary doubt. It is that state of the case which, after full consideration of all the evidence, leaves the minds of the jurors in such a condition that they cannot say that they feel an abiding conviction, to a moral certainty, of the truth of the charge. Every person is presumed to be innocent until he is proved guilty. If, upon such proof, there is reasonable doubt remaining, the defendant is entitled to the benefit of it by acquittal. It is not sufficient to establish a probability, though a strong one, that the fact charged is more likely to be true than otherwise, but the evidence must establish the truth of the fact to a reasonable and moral certainty — a certainty that convinces and directs the understanding, and satisfies the reason and judgment of those who are bound to act conscientiously upon it.

"I am asked by the defendant to charge, and I do charge, that, in order to find the defendant guilty, 'evidence must be such as to exclude every single reasonable hypothesis, except that of the guilt of the defendant. In other words, all of the facts proved must be consistent with, and point to, the guilt of the defendant, not only, but the facts must be inconsistent with her innocence.' And this, also, I charge at the request of the defendant. It matters not how clearly the circumstances point to guilt, still, if they are reasonably explainable on a theory which excludes guilt, then it cannot be said that the facts in the case are sufficient to satisfy the jury, beyond a reasonable doubt, of the guilt of the defendant, and in that event she should be acquitted. I am asked

by the defendant to charge the following: 'If, after consideration of the whole case, any one of the jury should entertain a reasonable doubt of the guilt of the defendant, it is the duty of such juror not to vote for a verdict of guilty.' I give you that charge, with this additional injunction: that if, after a consideration of the whole case, fully, carefully, and honestly made after comparison with his fellow jurors with a view of arriving at an honest conclusion, still one of the jury should entertain a reasonable doubt of the guilt of the defendant, it would then be the duty of such juror not to vote for a verdict of guilty.

"I will proceed now to define to you the several acts which the law forbids, and of which the government claims the defendant was guilty.

"The usual business carried on by banks is to receive moneys on deposit from persons who desire a safe place to keep their funds, and a convenient place from which they can, when needed, be withdrawn, and to loan money to persons who desire to borrow it. According to the usual custom of such banks, of which the Citizens' National Bank of Oberlin was a type, the money deposited by a customer of the bank would be entered to his credit, and when the depositor desired to withdraw from the bank any or all of the funds so deposited and carried to his credit, he would draw an order on the bank for the amount of money desired. This order is commonly called a check.

"In the transaction of the business of a bank, and in the transaction of the business of a depositor, it sometimes becomes desirable that the depositor, in addition to drawing this order or check against the fund to his credit in the bank, desires that the person to whom the check may be delivered shall be authoritatively advised and informed by the bank that the depositor has to his credit in the bank an amount of money equal to the amount of the check which he thus draws. This act of authoritative information that the maker of the check has such funds to his credit in the bank is, according to the custom of banks, usually evidenced by an indorsement on the face of the check, signed by some competent officer of the bank, declaring that the check is good. This proceeding is called the certification, or certifying, of the check, and operates to add to the liability of the maker of the check for

its amount the liability of the bank for a like amount, for it is a contractual assurance by the bank that funds to that amount are on deposit in the bank to the credit of the maker, and that the bank will hold such funds, equaling the amount of the check, to be used solely for the satisfaction and payment of the check. If, therefore, an officer of the bank thus certifies a check drawn by one of its customers, or by one who is not a depositor in the bank, when the person who draws the check does not have to his credit in the bank the amount for which the check was drawn, an obligation or liability is created against the bank which may injuriously affect the interests of the other depositors and the stock-holders of the bank. Thus we see the reason of the statute which declares unlawful the certification of a check when the person drawing the check does not have on deposit with the bank, at the time the check is so certified, an amount of money equal to the amount specified in the bank. But legislation on this subject has not stopped with the prohibition against certifying checks when there is not a sufficient amount to meet the check on deposit to the credit of the drawer thereof. It has gone further, and declared to be unlawful the certification of a check before the amount thereof has been regularly entered to the credit of the maker of the check. The purpose of this prohibition is to compel full compliance with the requirements of safe banking methods, and to make it necessary, in order that the law may not be violated, that a check drawn against an account be not certified until, in the usual and regular way, the account of the drawer of the check has been credited with an amount equal, at least, to the amount of the check so drawn.

"Now, these two offenses, in the nature of things, can be committed only by the officers of the bank. No certification of a check can be made, except by some official of the bank whose signature, attached to the certificate, implies to the holder of the check that the bank itself is back of the certificate; and it follows, from what I have said, that the defendant in this case could not be guilty of the penal offense of certifying a check under either of the two conditions which in this indictment make such certification of a check unlawful. But she is indicted, as I have before stated to you, under Section 5440, which provides that if two or more

persons conspire to commit an offense against the United States, and one or more of such parties do any act to effect the object of the conspiracy, all of the parties to such conspiracy shall be liable. I say to you that although the defendant could not, as I have heretofore indicated, be indicted or successfully prosecuted for unlawfully certifying a check, she can be indicted and successfully prosecuted, if the facts warrant, for a violation of Section 5440, in conspiring with a person who may, under the law, be capable of committing the offense of unlawfully certifying a check. But I say to you, in this connection, that the defendant could not be found guilty under any count in this indictment, except upon proof of such a state of facts as would justify you in finding guilty, on such count, the person with whom she is charged with conspiring, if such person were also made a party defendant in this indictment.

"It becomes important now for me to define a conspiracy, as that word must be defined under Section 5440. A conspiracy, in criminal law, as applied to the charge in this case, is a combination of two or more persons, by some concerted action, to accomplish some criminal or unlawful purpose. To constitute a conspiracy, it is not necessary that two or more persons should meet together, and enter into an explicit or formal agreement for an unlawful scheme, or that they should directly, in words or in writing, state what the unlawful scheme is to be, and the details of the plan or means by which the unlawful combination is to be made effective. It is sufficient if two or more persons, in any manner, or through any contrivance, passively or tacitly, come to a mutual understanding to accomplish the combination and unlawful design. In other words, where an unlawful end is sought to be effected, and two or more persons, actuated by a common purpose of accomplishing that end, work together in any way in furtherance of the unlawful scheme, such persons become conspirators. In this case it is enough if, as the result of separate negotiations, at the same or different times and places, an arrangement was made such as is set out in any one of the counts of the indictment, and some act in furtherance of such arrangement, and specified in that count, was done by one of the parties to such arrangement. If, therefore, you find from the evidence

such facts as warrant the inference that such arrangement as I have defined was made by the defendant with either of the parties with whom she is charged with conspiring, and that the act charged as being done in furtherance of such arrangement was performed by either one of the parties so charged with conspiring, it will be your duty to return a verdict of guilty against the defendant as to such count or counts of the indictment in respect to which you find such facts, if you should so find them.

"I am requested by the government to charge, and I do charge, as follows: The jury is instructed that a conspiracy can seldom be proved by direct testimony. Persons combining for the execution of a crime do not ordinarily expose themselves to public observation, and the fact of combination can, therefore, as a general rule, be established only by proof of the acts of the several parties in such combination, the relation of these acts to each other, and their tendency, by united effect, to produce the common result. In other words, where the jury finds that the acts of the several parties charged with conspiracy are the co-ordinates of each other, and are for the consummation of the criminal purpose charged in the indictment as the object of the conspiracy, they are at liberty to find that the various parties performing these several and respective acts were engaged in a conspiracy to commit the offense, although there may be no direct evidence whatever before the jury to show that such parties ever entered into any agreement to commit such offense.

"And I am asked by the defendant to charge on this subject, and do charge, that it is incumbent on the government to prove the conspiracy which it claims to have existed between the defendant and the person or persons named in the respective counts of the indictment beyond a reasonable doubt, and if, on careful consideration of all of the competent evidence which has been received in this case, you have any such doubt, it is your duty to resolve such doubt in favor of the defendant.

"I am asked by the government to charge, and I do charge, in this connection, that the jury is instructed, on the question of intent on the party of the defendant, that the law presumes that every person intends the natural and ordinary consequences of his acts. Wrongful acts, knowingly or intentionally committed,

cannot be justified on the ground of innocent intent. Ordinarily the intent with which a man does a criminal act is not proclaimed by him, and ordinarily there is no direct evidence from which the jury may be satisfied, from declarations of the criminal himself as to what he intended when he did a certain act. And this question of intent; like all other questions of fact, is solely for the jury to determine from the evidence in the case. Generally, upon this subject of conspiracy, I instruct you that it is competent for you to consider all of the facts developed in the case for the purpose of answering the question as to whether or not a conspiracy was in fact entered into between the parties named in the indictment.

"I am asked by the defendant to charge, and I do charge, that the defendant is to be tried on the indictment in this case, and on that alone. It would make no difference if she had committed a multitude of other crimes. If she had not committed the crime of conspiracy, as set forth in this indictment, it will be your duty to acquit her in this case.

"The claim is made by counsel for the defendant that there is no proof that the defendant had knowledge that the act of certifying the check, if done as claimed in the indictment, was in violation of the law. On this point, I say to you, gentlemen, that a conspiracy cannot exist without a guilty intent being then present in the minds of the conspirators; but this does not mean that the parties must know that they are violating the statutes of the United States. The government is not required to prove, in order to sustain a verdict of guilty, that the parties knew that some statute forbade the acts they were performing. If these acts of certifying checks, or any of them, as charged in the indictment, were in fact violations of the law, the defendant is to be held guilty if she, as charged in the indictment, conspired with Beckwith or Spear in bringing about their certification; and the question of her knowledge or her ignorance of such acts being contrary to law is not a fact which you have a right to consider. The only question for you to pass upon is whether the defendant violated the law; not whether she had any knowledge that she was violating the law.

"Applying the definition of conspiracy to this case, I say to you that, in order to convict the defendant on any of the counts of the

indictment, it must be shown by the evidence, beyond a reasonable doubt, that she conspired with either Beckwith or Spear to procure the certification of her check by one or the other at a time when both he and she knew that she had not funds to her credit in the Citizens' National Bank of Oberlin, at least equal to the amount of the check so certified; and, of course, if Beckwith and the defendant did so conspire, and the check described in the first count was so certified by him, and if Spear and the defendant did so conspire and the checks described in the third, fifth, seventh, ninth, eleventh, and fifteenth counts were so certified by Spear, then the defendant would be guilty on all seven of the counts just referred to; that is, the seven odd-numbered counts now before you for consideration. Now, in order for the defendant and Beckwith or the defendant and Spear to be guilty of such conspiracy, two things must have occurred: First, they must have agreed that Beckwith or Spear should do the unlawful thing charged in the indictment, to wit, certify her check when she did not have on deposit to her credit in the bank funds equal to the amount of the check so to be certified; and, second, one of them must have done some act in furtherance of the conspiracy — in this case the act charged as having been so done in furtherance of the conspiracy was the certification of the check. In order to enter into such unlawful conspiracy, it is not necessary that you should find that the parties, in set words or in any formal way, made a plan which either or both recognized was in violation of the law. It will be enough if you find that, by mutual concert of purpose, the plan came into existence, by which it was understood by both of them that the act of certifying the check was to be done when the defendant had not funds on deposit equal to the amount of the check. I have eliminated, you will recall, the thirteenth count of the indictment — that was the check which was dated in February, and marked at the bottom 'payable March 1st,' so that there are seven of the odd-numbered counts only, referred to by me in this charge.

"Two facts are admitted, or at least they are not denied: First, that the seven checks were drawn by the defendant on the Citizens' National Bank of Oberlin; and, second, that they were certified, one by Beckwith and six by Spear. So, that, if the conspiracies

charged in the indictment were entered into, the act which completed the crime was committed, if that act itself was a crime; and, if it was a crime committed by Beckwith or Spear, then the defendant was guilty of conspiracy as charged in the indictment, although she, not being an officer of the bank, could not herself commit the crime of unlawfully certifying a check. This question as to whether or not there was such a conspiracy as charged in the indictment, and as defined by me, you are to answer under all the evidence in the case. You should consider the relations between the parties, their acquaintance, whether intimate or otherwise, the opportunities for such acquaintance, and the reasons, if any there were, for the manner in which they transacted their business together. If there was any secrecy about their transactions, you should consider whether that secrecy was such as persons engaged in large business transactions are likely to maintain, or naturally and rightfully adopt. Persons have a right to keep their business affairs to themselves. Whether the conduct of the parties to these transactions was such as is naturally referable to such rightful secrecy is for you to say.

"The government claims that at the several times these several checks, respectively, were certified, the defendant did not have to her credit in the bank funds equal to the amount of the checks so certified. I say to you that, so far as this particular branch of the case is concerned, if the defendant, at the time when any of these checks were certified, had a deposit, or had an actual credit, in the bank in an amount equal to the check, whether regularly entered as a deposit to the credit of her account or not, she would not be guilty as to the count of the indictment which was predicated on that check. Now, if you are satisfied that the conspiracy was formed, as charged in the indictment or in any of the counts thereof, and in answering this question you are, as I have said, to consider all of the evidence in the case bearing on it, you will further say whether or not any or all of these checks were unlawfully certified by Beckwith or Spear. The government claims that it has proved that, at the time when the checks were certified, there were not funds sufficient in the bank to the credit of the defendant to meet them. Whether this claim is or is not sustained is for you to say.

"The defendant insists that the proof does not support the claim of the government in this respect. You have heard the evidence, the books of the bank have been presented before you, the witnesses for the government have testified as to what they did and what they did not find in them respecting the defendant's credits and deposits at the times when the checks were drawn, the defendant has had access to these books, and her accountant has examined them and has testified concerning them. It is for you to say whether the books do or do not show that she had such credits. It is fair to presume, under all the circumstances disclosed to you, that both sides have presented to you all that the books contain favoring their respective contentions, and it is for you to say what the facts and just inferences are. In respect to proof of the claim of the government that the defendant, at certain times, had not sufficient funds to meet her several checks, the evidence must necessarily be of a negative character. That is, the witnesses cannot point to some particular entry to support their statements. They can only declare how careful was their search, and that they did not find evidence of such funds being, at the times in question, in the bank to the credit of the defendant.

"Evidence was introduced showing that the defendant executed a number of notes, aggregated \$104,000, to the Citizens' National Bank of Oberlin, all dated August 24, 1903, and payable on demand, and that of these notes, two, aggregating \$15,000, were first entered on the journal of the bank under date of November 3, 1903, and were given the proper serial numbers as of that date. The evidence does not disclose that the residue of the notes were ever entered on the books of the bank, unless they were so entered January 29, 1904, the date of the cancellation stamp on the face of the notes. Nor did these notes, other than the two for \$15,000, have any serial or discount number such as appears on the note for \$15,000. The evidence also shows that on August 24, 1903, the bank issued to the defendant two New York drafts, aggregating \$80,000, and a certified check for \$12,500, which is the certified check upon which the third and fourth counts of the indictment are based, and that no entry of these drafts for \$80,000 was made on the books of the bank until September 29th. These are all facts proper for you to consider in determining what your duty is

in this case, and determining whether or not Mrs. Chadwick had credit to her account in the bank on August 24, 1903; and it is proper for you to consider them, in connection with all the other circumstances in the case, for the purpose of throwing light on the question as to whether or not a conspiracy was entered into between Mrs. Chadwick and Beckwith and Spear.

"The first and second counts in the indictment relate to the check certified by Beckwith; and the evidence concerning that check differs somewhat, at least in the details of the certification, from that touching the other checks referred to in the indictment. Doubtless you remember the substance of all of it. It is for you to say, considering that evidence and construing it in the light of this charge, whether or not the defendant and Beckwith formed the intention, and by mutual concert arranged, to have that check certified, knowing that there were not, at that time, funds in the bank to her credit in an amount equal to the amount of the check. If they did so, then the defendant was guilty of the charge made in the first count. Two papers, purporting on their face to be letters from the defendant, one to Spear and Beckwith and one to Spear, have been offered in evidence; a witness having testified that they are in the defendant's handwriting. The direct evidence is silent as to whether they were ever received by Beckwith or Spear; but, if you find that they are in the handwriting of the defendant, you will give to them such interpretation and force as, under all the surrounding circumstances, you think them fairly entitled to. They may, if in your judgment they are entitled to such an interpretation, furnish some information as to the kind of transactions carried on between the defendant and Beckwith and Spear, and whether the relation which she and they sustained to the bank were such as to tend to support the contention of the government that the defendant and Spear and Beckwith were engaged in a conspiracy to violate the law respecting the certification of checks. I have thus far, in my reference to the charges and the evidence, referred chiefly to the odd-numbered counts. The even-numbered counts relate, as I have already said, to the certification of checks when the amount to the credit of the drawer of the check was not regularly entered to the credit of the person making the check. This, you will note, is a very

different charge from the other, and may be made, although as a matter of fact the drawer of the check has to his credit funds sufficient to meet the check. It may well be doubted whether, in any but very exceptional cases, the drawer of the check, if he be not an officer of the bank, could know whether the books of the bank were properly kept, however full his knowledge might be that he was entitled to credit in the bank. I am unable to discern any testimony in this case tending to show that the defendant conspired with either Beckwith or Spear to have her checks certified when the amount to her credit was not regularly entered on the books of the bank. It is true that if she had no funds to her credit, and, in that state of her account, she conspired with Beckwith or Spear to have her checks certified, she must have known that no regular entry could be made on the books of the bank of that which had no existence at all. Yet I do not think that the statute was meant to meet such a case. You will therefore disregard the even-numbered counts; or, rather, as I have already, during the course of the trial, instructed you respecting counts 13 and 14, you will return a verdict of not guilty as to counts 2, 4, 6, 8, 10, 12, 13, 14, and 16. You will consider in your jury room counts 1, 3, 5, 7, 9, 11, and 15, and determine whether, under any or all of them, the defendant is guilty; and that you will not do, unless you are satisfied of her guilt beyond a reasonable doubt.

"Gentlemen of the jury, it is not for you to consider the consequences of your verdict, whether it be guilty or otherwise. You are here solely to try the case which has been presented to you from the witness stand, under the direction of the court. It is proper for counsel to present to you their reasons, on the one side or the other, advising and urging the return by you of a certain verdict. This is a wise and proper method of instructing the jury and aiding it in arriving at a conclusion; but you will not consider statements of counsel as facts bearing upon the case, except in so far as the testimony given from the witness stand supports such statements. Reference has been made, especially by counsel for the defendant, to what is called popular claimor or public demand. The court has no fear that you gentlemen will be moved by any consideration, except a determination to do justice between the government on the one side and the defendant on

the other, according to the law and the evidence and according to them alone. The court does not fear that public clamor, either one way or the other, will move you to your conclusion. Yet I ought to say to you that it is well, since the subject has been adverted to, that you should guard yourselves against the danger of being moved to bring in a certain verdict because popular clamor or public sentiment may be thought to be favoring it, or, on the other hand, because of such public clamor for one verdict, to undertake to bring in another verdict. You are not to be influenced by such a thing either way. The defendant is entitled to the best consideration you can give to the testimony in the case. You must appreciate, as intelligent and conscientious men, that the only commendation worth having is that which comes when a satisfied conscience and an intelligent self-respect proclaim that you have done right.

" You may find the defendant guilty as to each of the seven counts in the indictment which I have submitted to you, if, under the proof, you are satisfied, beyond a reasonable doubt, that she is so guilty; or you may convict her as to one or some of the counts, according as the testimony may satisfy you, beyond a reasonable doubt; or, if the evidence does not satisfy you, beyond a reasonable doubt, that she is guilty of any one of the charges set out in the indictment, then you should return a verdict of not guilty. So you will observe, gentlemen, that your verdict may be one of three forms; either guilty as she stands charged in the first, third, fifth, seventh, ninth, eleventh, and fifteenth counts of the indictment; or guilty as she stands charged in one or more of those seven counts of the indictment, naming them, and not guilty as to the remaining counts; or not guilty."

FORM NO. 50

Charge to Jury — Violation of National Banking Act.

United States *v.* Raymond and Jennings. Southern District of New York (Unreported).

MAYER, JULIUS M., J. — " Gentlemen of the Jury: At the outset, I feel that I should express a word of appreciation in respect

of some of the features of this case. You have been, and so have I, specially favored by the assistance of able, earnest, conscientious and courteous counsel. I have seen in the course of my professional career a great many cases tried before juries, and I do not exaggerate when I say to you, that the manner in which the counsel in this case have conducted themselves has contributed much to bringing into the case an atmosphere that makes for real justice. And, while the case has lasted a long time, as such cases must, it would have lasted much longer, were it not for the capable preparation made and for the elimination by counsel on both sides of many technical requirements and proofs, which, if insisted upon, would have lengthened this case much more.

"I know of no higher aspiration for any right-minded man than to make contribution to the administration of justice. And I say with gratification more than ordinary, that you have made that contribution already in high measure. You have given an earnest, close and considerate attention to this case which I have rarely seen equaled and never excelled. You have throughout indicated no irritation or impatience, and, notwithstanding, as I fully understand and appreciate, the sacrifice this must have meant to all or many of you in respect of time and convenience.

"The time has now come when you are to perform a supreme duty. It is to be performed carefully, deliberately, and having in mind solely the evidence in the case, and you are to weigh that evidence and give it in good conscience its just value within the limitations of the law in regard to which I shall instruct you.

"Preliminarily, there are some general observations which should be made, so that you may approach the consideration of the facts in a correct mental attitude. It is my purpose, and I shall not fully do my duty, were I not to follow out that purpose, to outline to you certain of the essential facts of the case. That outline need not be as full as I had at first anticipated, because of the very comprehensive, able and clear argument presented by counsel for both interests. But nevertheless, in a case involving so many transactions, and so many figures and so many pieces of documentary evidence, it is proper that I should endeavor as a final thought to outline what I may call the mathematics in the case,

so that you may have in the course of it each transaction clearly in mind, when you leave here to enter the jury room for your deliberations. When I do so outline the facts, I wish you to bear this in mind: A judge of this court has a latitude not given in some other jurisdictions, to comment on the facts, and he may within reasonable limits, go so far as to express his opinion upon the facts. But whether he shall so do, and how far he shall go, rests largely in his own discretion.

" It is my purpose in this case not to express an opinion upon the facts, for you are the judges of the facts. That is your province, and I do not propose, even if I had the ability so to do, to influence your judgment on the facts a hair's breadth. And I take that course, by reason of the patient and intelligent attention you have given to this case, and I believe that your judgment will be much more sure than the opinion of a judge, or the opinion of counsel, in the case. And, therefore, if, throughout this trial, you perchance shall have imagined or gained the impression that I had any opinion in regard to the transactions so far as the facts are concerned, or that I had any opinion as to the credibility of any witness, dismiss that impression from your minds, because I meant to express neither by manner nor by voice any opinion on the facts.

" If, during my charge, it seems to you that emphasis is laid or not laid upon some fact, pay no attention to such an impression, because it is not my purpose to create it.

" You heard during the trial the statement made by me on more than one occasion, that you were to take your recollection. That I cannot emphasize too strongly. If, in this array of difficult and complex transactions, I should state something which does not accord with your recollection, it is your recollection which must govern, because the responsibility of this verdict rests on you and on none other. Now, you must take this case on the evidence.

" All men are essentially human in their desires, in their sympathies, in their points of view. It is not strange that an earnest and conscientious counsel for the Government should paint a picture in the shadow of which stands the depositor, who has lost his money in some degree or measure and that you should feel that some grave injury has been done to the depositor. It is not strange that earnest and conscientious counsel for the defense

should have in his mind a picture, in the shadow of which stands the family, but with either of those considerations you have nothing to do. Courts of law are organized for justice. Sympathy, clemency, considerations that move through the kind and measure of punishment, are not for the jury. There is no case of this character tried anywhere that has not behind it the human element of sympathy, and if that element were permitted to enter into the deliberations of jurors, it would be impossible to obtain sound and just verdicts on the evidence. So you must dismiss that absolutely from your minds, and you must likewise dismiss from your minds the question of what the statute provides in the way of punishment for the offense here charged.

"The imposition of punishment is a duty which rests upon the judge, and he in his conscience and discretion may suspend sentence, or he may impose a punishment within the limits that the statute prescribes, and if he errs an appeal may be made to the Executive of the nation, who has full power to act as he deems best in such regard, and therefore, what the punishment is under this statute is something with which you have nothing to do. You are to decide this case on the evidence, and you are not to permit any other element or consideration to influence you in the important and solemn duty which you are called upon to perform.

"There is a rule as old as Anglo-Saxon jurisprudence almost, that every man is presumed to be innocent until he shall be found guilty, if he shall be found guilty, by the judgment of his peers. That presumption follows and remains until the moment comes, if it does come, when his peers shall declare him guilty beyond a reasonable doubt, and the fact that indictments have been found against these defendants should not influence you in any manner, shape or form, for an indictment is nothing more than an accusation, usually found by a Grand Jury upon a presentation of the *prima facie* case where the defendants rarely have an opportunity to be heard, and so this presumption of innocence carries itself through up until the moment of time, if the time occurs, when you shall find the defendants or either of them, guilty of all or of any of the offenses charged, beyond a reasonable doubt. And, what is a reasonable doubt, I shall explain later on in this charge.

"I think it is desirable also in a case of this length that when you go to deliberate you shall not pay undue importance to the minor features of the case. You know that during the past week it has been the effort of counsel on both sides to strike out non-essentials as they saw them, and to hurry this case along, so far as was consistent with a just consideration, and it may very well be, that one side or the other, in that desire and in that hurry, has omitted to call attention to some minor detail of the testimony, and the fact that that has occurred, should not carry with you any undue weight.

"Finally, remember that this is a trial in a court of justice the object of which is to ascertain the truth. It is not a contest. Unfortunately, we have read at times of criminal trials which seem to be a contest between astute counsel, rather than an earnest inquiry and investigation to determine the truth. And, it matters not here to counsel, what your verdict shall be — your verdict will be neither a victory for the Government nor for the defense; it will not redound to the credit or the discredit of the earnest and able attorneys who have tried this case. Your verdict will be a determination, and that only, upon the evidence.

"Now, in order to understand this case, and I think that you probably have taken the same point of view, you want to paint in your minds in the first place a picture in outline of the relation of these defendants to each other and to all the persons, enterprises and transactions mentioned in the case. I think it fair to say that the transactions here charged revolving around the Mount Vernon National are interlaced with the First National Bank of Oneonta, and were brought about in the main through the White Plains Development Company situation, the Broadway & 43rd Street situation and the Hub Building Company situation. Outside of that, there is the so-called Aucaigne transaction, which stands by itself — not related to any other transactions, although related in some respects to Henderson, who happens to appear in regard and in relation to other transactions. And, as you look at this outline, remember that you must put your minds back, if you can, to the time when these things here charged took place; endeavor to get the mental condition, so that you can determine what the situation was at the particular time when the particular

transaction took place which is charged in this indictment. And you are not to consider what took place after, except in so far as you may find it necessary to see what disposition was made of the moneys which have been here credited and debited, so that when you know that disposition, it may be serviceable to you in more clearly understanding the transaction charged.

" Let me say here, and before we enter upon a further consideration of the facts, that under our system of law a man must be informed clearly and definitely of the accusation which he is called upon to answer. And that provision is, again, almost as old as Anglo-Saxon jurisprudence. It is a provision which became necessary originally, through the aggressions of the Crown, so that a man was not to be put in jeopardy for something of which he had not heard, and for something in regard to which he was not charged. And no matter what you think these defendants did or did not do in regard to transactions other than those charged in the indictments, you have power to find them innocent or guilty only in regard to those transactions and none other, and the sole purpose of allowing testimony in regard to other transactions is, in order that your minds may be enlightened, the better to understand the transaction charged.

" Now, returning to the facts, it appears that somewhere about January, 1909, the defendant Jennings became President of the First National Bank of Mount Vernon. He had acquired for himself, as the testimony developed, in the neighborhood of 600 shares of stock, and his associates had acquired some 400 shares of stock, or thereabouts, so that he and his associates held somewhere around a thousand, or perhaps a trifle over, of the shares of stock of this bank, out of a total of 2000 shares. The capital of the bank ultimately became \$200,000 — its surplus \$24,000, so that under the law the total which might be loaned to any one person was one-tenth of that, to wit, the sum of \$22,400.

" When Jennings became the President of the Mount Vernon National Bank, in the city in which he has long resided, he was a man of good repute in that community. It was a community in which he had lived and in which he had been engaged in business enterprises. There was no acquaintance between Jennings and Raymond until Raymond, evidently desiring to better his position

which he then held in a bank in Brooklyn, sought to become cashier of this bank, and after investigation and references, ultimately became cashier. Raymond at that time was a man of good repute in the communities in which he had lived, and he had lived practically all his life in the County of Westchester, and not far from the City of Mount Vernon. And so the one continued as President until the bank was closed, and the other as cashier until the bank was closed. And while Raymond at the beginning was not a director, he bought a small lot of the stock, and after a while became a director.

"The transactions here complained of seem, with one exception, to have been begun somewhere along the summer of 1909. And when I say that, I do not mean that the things charged in the counts began, but that the enterprises in which the defendant Jennings became interested began to formulate somewhere in the summer of 1909, with the single exception of the White Plains Development Company, and that was an enterprise in which Mr. Jennings had been interested prior to that time, and prior to the time that he became President of the bank.

"Now, I think I need hardly recite in any detail anything more than the general features of those transactions, because, by this time, you must be fully as familiar with them as I, and probably more so. The White Plains Development Company was the successor of the company known as the Anderson Hill Company, which had bought and intended to undertake the development of a large acreage property in or near the village of White Plains, and adjoining large estates of well-known citizens.

"That property consisted of some 270 odd acres, and Jennings testified that it opened up to his mind an opportunity for a sound and profitable enterprise.

"The Broadway & 43rd Street property had to do, as you well know, with the erection of a building at the corner of Broadway and Forty-Third Street, and that building was to be devoted to business offices, to a theater, and it was hoped, likewise, to a restaurant.

"The Broadway and Forty-Second Street corner, which subsequently became the subject-matter of the Hub Building enterprise, presented, as did the Broadway & 43rd Street enterprise,

a fair probability of success, and I think it is unnecessary to tell a jury, consisting as this does, of business men and professional men, familiar with conditions in New York, that none of these three enterprises are to be put in the same category with wildcat enterprises in unknown mines, or similar things. These were enterprises which bore ocular demonstration, and which had to do with properties that any man might physically see. When these enterprises were entered into, the testimony is, and it is undisputed, that Jennings made careful investigation with a view of obtaining a sound judgment as to the value of these enterprises.

"Now, at this point, it is proper to say, that when you come to deliberate, you have a right to consider the personal interest of these men as bearing upon the intent in regard to which I shall charge you later. And, you are to apply to that the common sense which you use in your daily lives, because, where a man has a personal interest in an enterprise that will inure to his own benefit, one situation may be presented, and where a man has no personal interest, another may be presented. But the mere fact that a man has a personal interest raises no presumption of wrong doing, and it is to be considered only when connected with all the other circumstances, for the purpose of determining the intent that surrounded the transactions complained of.

"It may be said, as referring to the defendant Raymond, that where a man has no personal interest, no possibility of personal or pecuniary profit, and where a man has made not a cent's worth of personal profit, that is a strong consideration which merits the attention of the jury upon the question of intent.

"I think also, at this point, that it is rather important that your minds should not be led astray by non-essentials. The business of banks is to make money, and behind that, and more important, is to keep up and continue the credit of good men entitled to it. And through the banks much of the business of the country must be done, and by their honest and legitimate transactions, business is made possible and business is moved. And, if you ever study it in detail, you will find that at the basis of business which is always credit, and confidence lies with the bank, that the honest merchant may borrow from the bank, and with that borrowing

may be enabled to conduct successfully an honest enterprise. The way in which the bank makes money ordinarily is by discounts, and it may not take more than six per cent, generally speaking, for the loaning of money on paper.

"Now, it is a fact with which you are all familiar, that a bank gets its business in part through the influence and the ability of those connected with it, and from the largest bank in this great city to the smallest bank in a country community, the business comes in, in some measure at least, through the influence of the officers and directors, and there is no presumption to be cast against these defendants as a matter of law, because in these enterprises, the bank was to receive a profit of only six per cent — that is all the bank could receive — and because the defendant Jennings might have made a large profit, because, day after day, dealing with railroad enterprises and large transactions, the great financial interests of the city may make large sums of money, and the banks may make their interest discounts, and yet that fact does not presume of itself any wrongdoing. But it is the duty of an officer of the bank to safeguard the interests of the bank. He holds a trusteeship, second probably to none in the workaday life, through which we all go. Whether he be president or cashier or director, he is there in a representative capacity, and when he looks at the bank's money, it is the bank's money that he is looking at, and not his own. And the community rests its confidence upon the president of the bank, and the cashier and the directors, for they have no other way in which to be assured of the righteous transaction of the bank's business. And when a man undertakes to be the president of a bank, or undertakes to be the cashier of a bank, he undertakes a trust as profound and as responsible as comes to any man.

"It matters not what the salary is; when men undertake responsibilities they are charged with them. And, whether the defendant Raymond got \$1800 at first, and \$2700 afterwards, or whether he had gotten \$27,000, his duty would be precisely the same. And that of course applies to the president and to the directors. Now, having those things in mind, you will remember that Mr. Jennings came into contact with certain groups of people. One group I shall call for convenience, as we did during the trial, the West-

chester group. That consisted of Henderson and Moran in the main, both old friends of Jennings's; both attorneys, and both long residents generally of the neighborhood in which the defendant Jennings lived. Another group was the group that revolved around Jones and his associates — R. W. Jones, Jr., then the Vice President of the National Reserve Bank, and formerly an officer of the Consolidated Bank, Bird M. Robinson, a half-owner, so it was testified, of the stock of the Tennessee Railway, William E. Halloway, the President of the Hungarian-American Bank, and in sort of the same relation, although not originally so, Moses Greenwood, Jr., the Gray Construction Co., and then in a way related, Edmund K. Stallo, and then, related by way of introduction, John Hanson Kennard.

"Now, Jones and Halloway were presidents or were officers of banks. Stallo was the son-in-law of a man named McDonald, concededly reputed to be a man of large means. Robinson, it is claimed by the testimony of Jennings, was reputed to be a man of substance. Originally through Jones, if my memory serves me, Jennings borrowed a considerable sum of money — somewhere in the neighborhood of \$60,000 or \$70,000 or \$80,000, when Jones was connected with the Consolidated Bank, and that ultimately became reduced, as you will recall, so that the National Reserve Bank, successor of the Consolidated, had Jennings's obligations for \$12,360 still unpaid at a time when the Mount Vernon National Bank was already in serious difficulties.

"You have a right to consider, when Jennings undertook the presidency of the Mount Vernon National Bank, that the stock of the Mount Vernon National Bank purchased by him was purchased in part by means of funds borrowed from another source, and you have a right to consider that when Jennings purchased into, with his associates, the control of the First National Bank of Oneonta, that purchase was made with borrowed money — not that the borrowing of money involves any wrongdoing, or a presumption thereof, but that the borrowing of money for the purchase of an interest in banks is a fact which may be considered with other facts as showing you the whole situation. But in that connection you also have a right, as affecting the good faith and the intent of Jennings, to consider whether he was justified

in believing that these men who entered into these transactions with him were financially responsible, and in that connection you are entitled to look at it as it then was — one man, the vice president of a bank, another the president of a bank, another reputed to be the half-owner of a railway, another the son-in-law of a man admittedly reputed to be of large means.

"It was not so very long after Jennings became president of the Mount Vernon National Bank that a situation arose in regard to the White Plains Development Company which needed attention. And at this point I will ask, with the consent of counsel, which has already been most courteously given, that Mr. Rank show you the exhibits as I call them out.

"In Counts 1, 3 and 4 of the second indictment misapplication on March 5th, 1910 of a total of \$22,500 is charged. Count 1 charges the whole \$22,500. Count 3 charges the \$12,500 draft of McDonald on Shelland and Count 4 charges the \$10,000 of McDonald on Herbert W. Smith. The last two make up the total of \$22,500 referred to in the first count. And we may interrupt the recitation of the facts at this point to say that under the practice in the Federal courts, the same transaction may become the subject-matter of several counts in an indictment. In this case the defendant Jennings is charged with misapplication and, in certain instances, with embezzlement. The defendant Raymond is charged with misapplication, and as you know, I have dismissed the counts as to him relating to embezzlement. So that you will find — and I will make clear to you later on, in what detail — you will find the same transaction charged in some instances more than once in the indictment, and you will find, as in this case, that there are three counts relating to one transaction, because one count has to do with the whole \$22,500, and the other two counts have to do with the constituent elements of that \$22,500.

"Count 1 of the first indictment charges the misapplication of \$20,000 on July 6, 1910. That is where it is claimed that Greenwood gave his note and that the bank issued two certificates of deposit of \$10,000 each. And I am grouping these counts, because they have to do with the history of the White Plains Development Company.

"The testimony is that Mr. Farley, an attorney, had business with Mr. Jennings in the latter part of 1909 in connection with a mortgage on the Anderson Hill property in Harrison, Westchester County. That is the company which, as you know, later became the White Plains Development Company. And the Anderson Hill site was a part of a larger piece known as the Scarsdale Estates. The Scarsdale Estates had conveyed to the Anderson Hill Realty Company, and Jennings was a director of that company. The mortgages on the Anderson Hill Realty Company about November, 1909, were as follows: A first mortgage of \$30,000; a second mortgage of \$217,700, held for the benefit of the Scarsdale Estates by the Metropolitan Trust Company as Trustee for the bondholders, the first mortgage being held by Mr. Jaretski, of the well-known law firm of Sullivan & Cromwell. Sometime in 1909 the foreclosure of the first mortgage was commenced, judgment was entered, and the property was decreed to be sold. That judgment was entered on or about the 6th of May, 1909. The mortgage and judgment of foreclosure and sale were assigned by Mr. Jaretski to Miss Wilson, a clerk, of Mr. Jennings office on or about June 28, 1909. Miss Wilson assigned the judgment of foreclosure and sale and the mortgage to Mrs. Josephine M. Fairchild, the wife of George W. Fairchild, who has been referred to in this case as Congressman Fairchild, a man concededly of large means. This assignment to Mrs. Fairchild was dated on or about the 1st of July, 1909. Now, the sale under the foreclosure of the first mortgage was repeatedly adjourned until sometime in May or June, 1910.

"An action to foreclose the second mortgage was begun in the spring of 1909, and that action ran along substantially contemporaneously with the action to foreclose the first mortgage, and judgment in that action was obtained on or about September 25, 1909, and there was no sale under that second mortgage, because of negotiations which sprang up and took place between the defendant Jennings and Mr. Farley. Various stipulations are in evidence, which will be briefly referred to. In the second mortgage action, entitled 'Metropolitan Trust Company against Anderson Hill Company', there is a stipulation signed by the Anderson Hill Company and Herbert T. Jennings, as attorneys,

sometime evidently in November or December, 1909, providing for an adjournment of the sale for four weeks from December 17, 1909 to January 20, 1910 upon payment of \$10,000, and a further stipulation that the sale in the first mortgage action should be adjourned for five weeks from the middle of December to the middle of January, 1910, and the further stipulation that the Metropolitan Trust Company, which held a mortgage for the benefit of the Scarsdale Estates would vacate the foreclosure judgment on the payment of a sum in addition to this \$10,000 sufficient to reduce the principal of the Metropolitan Trust Company mortgage to \$175,000 at six per cent, and payment of all accrued interest up to November 1, 1909, together with taxes, insurance, costs and expenses, and the Metropolitan Trust Company was to execute and deliver to the White Plains Company an agreement to extend the time of payment of this \$175,000 for three years from November 1, 1909, the White Plains Company to increase the rate of interest which it was to pay from four to five per cent from August 8, 1908, which was the past due date, to November 1, 1909. That stipulation is Government's Exhibit 161, and we may not stop to read that.

"There was a further stipulation between the Metropolitan Trust Company and the Anderson Hill Co. dated January 17, 1910, providing for payment of a further sum of \$10,000, and an adjournment from January 20, 1910 to February 3, 1910, with an agreement to have obtained an adjournment in the first mortgage action from January 18, 1910 to February 1, 1910. And it was further stipulated, that on paying to plaintiff in that foreclosure suit the sum of \$5000 on February 1, 1910, a further adjournment, if necessary, of two weeks, in each action could be had, thus making the date of adjournment of the Metropolitan suit, which was the second mortgage suit, February 17, 1910, and of the Jaretski suit, which was the first mortgage suit, until February 15.

"It was further provided, in addition to the sum of \$20,000 which had already been paid, that is to say \$10,000 on the occasion of each adjournment, that the judgment of foreclosure would be vacated, on the reduction of the Metropolitan mortgage to \$175,000, with interest at six per cent, together with taxes and insurance et cetera. So that the situation was, that the Metropolitan Trust

Company, acting for the Scarsdale Estates, would extend the time of payment of \$175,000 for three years from November 1, 1909 on the White Plains Development Company agreeing to pay interest at five per cent instead of four from August 10, 1908 to November 1, 1909, and from November 1, 1909 to pay six per cent, and this last stipulation to which I have made reference was signed by Henry B. Griffin, an attorney of White Plains, on behalf of the defendant Jennings.

"On February 1, 1910, came a further stipulation which was entered into between the Metropolitan Trust Company and the Anderson Hill Company. This again was signed by Griffin for Jennings, and provided for payment of \$5000, and an agreement to adjourn the sale until the 17th of February, 1910 and to adjourn the Jaretski foreclosure to February 15, 1910. And the remaining part of the stipulation, as to the amount of interest and the reduction to \$175,000, is practically the same.

"When February 15, 1910 came along, there was a receipt in evidence of \$25,000, as having been received from Jennings on account of the mortgage, and an agreement to adjourn the sale fixed for February 17, 1910 for two weeks. I may say in passing that that \$25,000, the testimony shows, was contributed, \$12,500 by Fairchild — and no question is made that that was paid by Fairchild, and the \$12,500 by the draft of Jennings on Shelland, which draft, however, is not the subject-matter of any count in this indictment.

"Up to this point, \$50,000 is paid out on behalf of the White Plains Development Company to bring about a situation where the ultimate result would be that the first mortgage would be wiped out, cleared away, and the second mortgage held for the interest of this Scarsdale Estates would be reduced to \$175,000.

"On February 28, 1910, there was paid to Mr. Farley, as representing the second mortgage interests, the sum of \$22,560.77. That may be shown to the jury, Mr. Rank — Exhibit 165.

(Mr. Rank exhibits 165 to the jury.)

"The Metropolitan Company then consented to discontinue the case and cancel the judgment, and it delivered to the White Plains Company an extension of time of payment of the \$175,000 mortgage for three years from November 1, 1909. The balance

due the Metropolitan Trust Company for principal over the \$175,000, interest and costs, was paid on this 28th day of February, 1910, and that left for adjustment the getting out of the way of the first mortgage and some minor judgments, which had nothing to do with the case, and need not here be referred to.

" This \$22,560.77 was made up of the amount shown to be due on the statement rendered as between Farley, representing the Scarsdale Estates and Jennings, representing the White Plains Development Company, and that \$22,560.77 payment to all intents and purposes cleared up as between the Scarsdale Estates and the White Plains Development Company their respective relations, except that the White Plains Development Company was obligated to get that first mortgage out of the way. It is this \$22,560.77 that refers directly to Counts 1, 3 and 4 in the second indictment, and Exhibit 163, being the payment of \$5000, refers directly to the 3rd and 16th counts of the first indictment which have been called throughout the case the Oneonta deposit account.

" Jennings gave Farley and Rumsey his individual check for \$22,560.77, as testified to by Farley, and Farley says he deposited the check with the Gramatan National Bank of Bronxville, of which he was president.

" It is claimed that on March 1, 1910 the Gramatan National Bank sent the Jennings check, which was drawn on the Mount Vernon National Bank, to the Mount Vernon National Bank for credit, by a remittance letter, which remittance letter has been referred to as Exhibit 180 in this case. Exhibit 180 shows that in addition to the \$22,560.77 of Jennings, there was an item of \$200, which I would like you to remember has nothing to do with this case. So you see, this made a total of \$22,760.77. And on March 5, as appears from the books of the Mount Vernon National Bank, the Mount Vernon National Bank credited the Gramatan National Bank with this \$22,760.77, and debited or charged Jennings with the same amount.

" Now, you have the right, in connection with this transaction and every other, to examine what was the financial condition of Jennings at the Mount Vernon National Bank immediately before and immediately after any credit was given to him or any charge

against him. And, it appears from the evidence, that at the opening of business on March 5, 1910, there was to the credit of the defendant Jennings at the Mount Vernon National Bank the sum of \$314.14, and that on that day he received credit for two drafts aggregating \$22,500. So that you see, if you add the \$22,500 to the \$314.44, you have a total of \$22,814.44, and against that was the check for \$22,560.77 to which I have made reference.

"When the check of \$22,560.77 was paid, as appears at the bank, at Mount Vernon National Bank on that day, Jennings was left at the end of the day with \$253.27. This deposit of \$22,500 to which I have just directed your attention, was because of a credit accorded to him, Jennings, from draft on Shelland of \$12,500, and on Herbert W. Smith of \$10,000. The Shelland draft, so-called in this case, was a draft drawn by William P. McDonald on Shelland at Oneonta, of \$12,500. McDonald testified that he had no right to draw that draft on Shelland; he had no business relations with Shelland; Shelland owed him nothing, and was under no obligation to honor that draft.

"Jennings testified that he knew McDonald well; he had already had personal and bank transactions with him, and that McDonald, who was a contractor, was expected to get the business which might develop in connection with the White Plains Development Company — the business that a contractor would look for, and, as I recall Jennings' testimony, it was in substance and effect that McDonald was willing to make an accommodation note in the hope that ultimately he might gain a benefit from the White Plains Development Company. That brings up, I think, my first reference to the credibility of testimony.

"In this case there has been comparatively little conflict or dispute or difference in the testimony of the witnesses. But, there are points at which there are differences, and those differences in some instances are vital. You must determine who is to be believed. Now, in so determining, you will again apply, of course, your judgment as men of the world, and give the question of credibility the same kind and degree of judgment that you give to the ordinary affairs of your lives. You will judge the witnesses by their appearance, by their manner, by their candor or lack of candor, whether they have answered questions, if I may use the

term, straight from the shoulder, or whether they have dodged and fenced. You will consider what their interest is; what lawsuits they may or may not possibly be subjected to.

"As far as the defendants are concerned, they have a vital interest in the result of this trial, and you have a right to consider that fact, although it is but fair to them to say first, that they have taken the stand without any obligation so to do, and secondly, that even though men may be on trial for their liberty, that is not by any means necessarily inconsistent with the telling of the truth. And when you come to consider — and I dwell upon this here now so as not to be called upon to refer to it later — the testimony of all these men, consider what their interest is; what their liability is, what they are afraid of, if they are afraid of anything, and apply to the question of credibility, as I said before, your judgment as men of the world, who have the ability in most instances to determine whether a man is telling the truth or not. So here comes at this point a question of credibility, and at this point ask yourselves this question — and this question is for you, and I express no opinion, when that draft was drawn by McDonald on Shelland, first, under the evidence in this case, what was the responsibility of McDonald? And, if he had been called upon to pay, what was the likelihood that he would pay? Second, what was the responsibility of Shelland, and if he had been called upon to pay, would he have paid? Third, at this time, what was the responsibility of Jennings? How much did he really believe he was worth? And, if he had been called upon to pay, would he have paid? And, as the note or the draft, I should say, was not paid, why was it not paid? Was it not paid by Jennings through any fault of his own, because misfortune had followed him, and much as he would liked to have paid, yet he was unable to pay? Or, was Jennings worth what he thought he was worth at this time? Did he believe he was worth what he said he was worth? All those things, consider. And then consider the transactions of McDonald with the bank as showing his ability to pay and his reliability and then consider Shelland's transactions as showing his ability or lack of ability to pay.

"The net result, however, of this transaction was, and there is no dispute, that \$12,500 of Mount Vernon's money went to the

credit of the defendant Jennings. Now at this time there was in the Mount Vernon National Bank the demand note of the McDonald Realty Company for \$18,150, and some two or three thousand dollars of notes of McDonald and his wife. The draft on Shelland was taken by the Mount Vernon National Bank as cash. It was payable at Oneonta, charged on the books of the First National Bank against the First National Bank of Oneonta.

"At this point it is but fair to the defendants that I should say that I dismissed the McDonald Realty Company draft count because of course, I was of the opinion that there was no evidence of a crime there. But my opinion went further. It seemed to me in respect of the McDonald Realty Company notes that at the time they were given, there was no wrongful or sinister purpose involved, and that they were given in the exercise of an honest judgment as representing what Mr. Jennings believed would be a safe loan under the existing circumstances.

"Although there were \$18,150 represented in the demand note at the time this draft was drawn, it is for you to say whether that indicated or did not indicate that William P. McDonald was able or not to pay the Shelland draft, if he had been called upon to do so, although, as I think it was remarked in argument, there is no dispute that that draft was drawn by McDonald as an accommodation, and without any expectation other than that testified to by Mr. Jennings, of being called upon to respond for the payment of that draft.

"On March 28 the Mount Vernon National Bank credited Oneonta with \$12,500, and on that same day there is a charge on the books of the Mount Vernon National Bank to bills discounted of \$12,500. Of this there is no entry in the loan and discount register. There was, however, found in the bank at its close the renewal of what has been referred to as the Stallo-Gardner note. This note, Exhibit 183, was dated March 28, 1910, signed by Stallo, payable three months after date, to the order of Frank Gardner at the Mount Vernon National Bank, amount \$12,500 with interest, endorsed Frank Gardner. This is the note that Stallo testified was endorsed by Gardener while he was in the city of New York stopping at the Waldorf-Astoria, and the words 'Waldorf-Astoria', as you will remember, are in

Raymond's handwriting in pencil on the back of the note. The words and figures '\$18,750' and 'June 28' in red ink are in Raymond's handwriting, and the pencil words and figures '165 Broadway' under the signature of Stallo are in Raymond's handwriting. This note was renewed three times and the last renewal was due March 29, 1911, at a date subsequent to the closing of the bank. On March 5, 1910, this man, William P. McDonald, drew a draft on Herbert W. Smith for \$10,000 at Islip, Long Island. I think that there is no claim that McDonald knew Smith. Smith, Mr. Jennings testified, had been a Law School-mate, I think of his, and had practiced law up to some point in his life, when he went into the life insurance business. And Jennings testified that Smith hoped to get into the White Plains Development Company and by reason of their friendly association, he felt that Smith would honor this draft, and he also felt so because of Smith's expectation to go in, and also to dispose of White Plains Development Company bonds. This draft was charged to the First National Bank of Islip on March 5, 1910, and \$10,000, that is to say, an equivalent amount, placed to the credit of the defendant Jennings in the Mount Vernon Bank on the same day. On the books of the bank this draft remains charged to Islip till March 30, when it is charged to the First National Bank of Oneonta. I think there is no evidence in the case that the draft was paid by the First National Bank of Oneonta, or that any equivalent of the same was paid by that bank or by any one else. And it is a fact that \$10,000 of money of the Mount Vernon National Bank on the 5th day of March went to the credit of the defendant Jennings. Here again, I think I shall interrupt the reciting of these facts, because of one matter I called to your attention, and refer to the entries, or occasional omission of entries in the books of the Mount Vernon National Bank. You are to take that whole situation into consideration. If there is a failure to make an entry in some book, it may have been deliberate, or it may have been inadvertent. Banks of this character have not a large force of clerks, and even in the best of institutions innocent errors occur. Whether any of these failures to enter in one book or another the memorandum of entry occurred intentionally or accidentally, is for you to determine on all the evidence.

And in that connection you have the right to consider that so far as the matters here charged are concerned, substantially all the pieces of paper and documents which go to elucidate these matters were found in this bank at its close. And that is of necessity of some service in your consideration of the defendants, upon the question of whether they deliberately concealed entries. In that connection also — and I may say so here and be done with it — I should make clear another subject which properly belongs to a consideration of the law of the case, and which may be mentioned here, so that you will understand all these transactions. If there is a misapplication or an embezzlement, such as the statute prohibits, a subsequent disclosure of that misapplication or embezzlement by the person who has committed the same does not relieve the offense. Let me give you a homely illustration. If John Brown were to kill a man out here on the street, and then walk to the nearest police station and say he had killed a man, that disclosure by him would not change the fact that he had killed the man. And, if it was murder to have killed that man, then the subsequent disclosure will not avail John Brown. But John Brown may say at the police station, 'I killed this man, but I had good reason to do it; I killed him in self defense.' Then the disclosure becomes relevant and important on the question of intent.

"So, if you find that there has been a misapplication or embezzlement on the part of the defendant Jennings or a misapplication by the defendant Raymond, such as the statute prohibits, you cannot say that that act was not done, because subsequently it was laid before the directors formally or informally, or even though subsequently the directors fully approved that act; because directors have no power to approve or condone acts against the statutes. But, if you find that they frankly and fully and fairly told the directors either at formal meetings or in informal conversations, what, in point of fact, the real facts were, then you may take that into consideration as to whether or no they intended when they did the act, to injure or defraud the bank. And I want you to bear that very strongly and clearly in mind, if you will. And that brings up this whole argument between counsel as to the acts of the defendants in regard to these directors. I shall not spend

any time on the detail of those facts. You are in a perfect position to judge. You have heard the testimony of all concerned. Did the defendants make known these various acts complained of by the Government clearly, fairly, in such a manner that the substance thereof was conveyed to the minds of the directors, or did they not. The defendants say further, that there was no concealment by them at any time of anything that was done. And, in that connection, two bank examiners were called, one who made an extended special examination lasting over a considerable period of time, the other who made an examination lasting one day. Evidence has been produced to show that the notes and drafts and conditions generally of the bank were made known to these bank examiners by the defendants. That again goes to the question of intent, and is related to the question as to whether the defendants concealed or suppressed information to which the bank examiners and the directors were rightly entitled. But there again, if the act had been done, there is no power in any bank examiner to condone those acts. No bank examiner, by the most formal approval, has any power or authority to say that that which is a crime is not a crime. And that testimony is relevant, as I repeat, solely on the question of the intent of these defendants, and to enable you to determine whether they did the acts which are complained of openly, or whether they did them in the dark.

"We will continue with the White Plains situation. On July 1st — and I am now referring to the first indictment — the first count, the bank wrote out an incomplete certificate of deposit to Greenwood for \$20,000, and on that day Greenwood made his demand note dated on that day for \$20,000 to the order of Charles L. Marshall, whom you will remember was an employee of the Gray Company, and payable at the Mount Vernon National Bank (Exhibit 168). This note was endorsed by Marshall, and the note is marked cancelled, and on the back thereof is the notation, 'Note of \$10,000, dated July 1, 1910, for three months, made by M. Greenwood, Jr., and note \$10,000, dated July 1, 1910, for three months, made by Jules W. Coelos, taken in place of this note.' That notation is in Raymond's handwriting. The word 'Cancelled' on front and back of note is in Greenwood's handwriting, and attached to the note is a memorandum or a slip of the Mount

Vernon National Bank, dated July 28, 1910, addressed to Greenwood, stating that his account is credited with two notes, being the two \$10,000 notes above referred to, and that there is returned to him cancelled the note of July 1, 1910.

"There is a check, Exhibit 171, dated July 1, 1910, drawn by Greenwood on the Mount Vernon National Bank for \$20,000, not marked paid until July 28, 1910. On July 28, 1910 the Greenwood account is credited by a credit slip with bills discounted Nos. 4030 and 4031 for \$10,000 each, making a total of \$20,000 — Exhibit 177.

"The contention of the Government is that the proceeds of the Greenwood note of July 1st were placed to the credit of Greenwood. Or, in other words, that the discount of Greenwood's \$20,000 note is what bought those two certificates; the certificates which ran in favor of Mrs. Fairchild.

"It is agreed, I think that the proceeds of the \$20,000, whether credited to Greenwood on his note of July 1, or whether credited because of the discount of those two \$10,000 notes, that those proceeds went to buy those certificates of deposit. The defense says that the note of Greenwood of July 1, 1910 was never used. They say that that is apparent from the fact that the certificate of deposit dated July 1, 1910 was never made complete; that these two \$10,000 notes of these employees of the Gray Company were given at a later date, and, in short, the note of \$20,000 of July 1st never was discounted, and therefore there never could have been a misapplication of any funds by reason of a transaction that never took place.

"If you should find that the Greenwood's note of \$20,000 was not discounted, you must acquit the defendants on this count of the indictment, for upon this count of the indictment it makes no difference whether certain notes were subsequently discounted or not. These defendants are charged with the discount, or rather, I should say, with the misapplication of the note of July 1, 1910 of Greenwood. If it took place, in your opinion, in your judgment, within the rules of law that I shall hereafter state, you may find the defendants or either of them, guilty. If it did not take place, you must acquit the defendants, either or both of them.

"Upon July 1, 1910, in this connection, the Mount Vernon Na-

tional Bank charges bills discounted, \$20,000, and Greenwood is credited certificate of deposit No. 98, \$20,000. On July 28 they charge Greenwood with check No. 171 and credit him with the two notes. I think that pretty fully states that situation. We come now to the Aucaigne counts. Here there are two counts, being Nos. two and five, in the second indictment. I am not going to bother you with the technical distinction between those two counts. They both have to do with the alleged misapplication, and they are charged in different ways, because it was deemed by the Grand Jury proper, through the United States Attorney, for purely technical legal reasons, to charge that transaction in two counts. That situation as you of course remember is that Jennings was indebted to Aucaigne in the sum of \$8082.67, which represented a principal sum of \$8000, with interest, which had been owed by Jennings to Aucaigne since January 30, 1909. Aucaigne had lent this amount to Jennings, for which Jennings had given him his demand note with 100 shares of Mount Vernon National Bank stock as collateral. Jennings' check to Aucaigne for \$8082.67 was charged against Jennings on March 3, 1910. Jennings was credited with the check of Henry C. Henderson for \$9000, dated March 3, 1910, drawn upon the County Trust Company of White Plains. This check is not in evidence, but there is an entry in regard to the same which appears on the books. It is claimed by Jennings there was such a check, and the Government says there was not such a check. Your recollection of Henderson's testimony will avail you. But the point is Henderson's check for the amount and on the date mentioned was treated as a cash deposit to the credit of Jennings, as shown by remittance sheet in evidence, Exhibit 250. The check of Henderson remains charged to the County Trust Company until March 25, 1910, when the notes of the Manhattan Securities Company are claimed to have been substituted in the Mount Vernon National Bank in place of the Henderson check. These notes of the Manhattan Securities Company, you will recall, as shown in the cash book, are three in number, for \$5000, \$2000, \$2000 respectively. Those were notes of that company on printed forms, which were dated July 16, 1909, and payable one year after date. Those notes are Exhibits 281, 282 and 283, and one of them, 281, bears the endorsement of

Alexander McDonald. My recollection is—if I am in error counsel might correct me here—that at this time McDonald was still alive, that is, on March 3, 1910 McDonald was still alive, but that on March 25, 1910 McDonald had died. In connection with this count, you will remember the conflict of testimony. Jennings says that Henderson was indebted to him for a share of certain fees that Henderson had earned in some transaction in which they were associated, and that Jennings, or his office, had done a certain amount of work, which together with their close and friendly relations, they had agreed should inure to a certain extent to the benefit of Jennings, and that Henderson believed, and so told Jennings at this time that a \$20,000 fee for services rendered was to be paid to him in connection with this legal work, and that Henderson willingly gave to Jennings a check for \$9000 at Jennings' request.

"There are two things that you have a right to consider in this connection, as well as many others. What was Henderson's responsibility financially? What had he shown to be his responsibility, as developed on the books of the Mount Vernon National Bank? The testimony is that for a period of some five and a fraction months Henderson's total deposits at the Mount Vernon National Bank had been something in the neighborhood of a thousand dollars, and Henderson's own testimony, as I recall it is—and if I am in error, counsel or the jury will correct me—in substance and effect, that he never had an account equivalent to \$9000 at the County Trust Company of White Plains. And although it has not been mentioned, I think no one will take exception to the fact, so that you may be informed of it, that the County Trust Company of White Plains was a highly reputable and respectable financial institution. The substance of Jennings' testimony in this regard, and the effect of Jennings' testimony in this regard is that whatever Henderson's balance may have been either at one bank or the other, or whatever his financial responsibility may have been, nevertheless Henderson had spoken to him in regard to a specific sum considerably in excess of the \$9000 represented by Henderson's check. Ask yourselves under those circumstances, and under all the circumstances disclosed in this testimony, was Jennings justified, and if Raymond in your opinion

knew about it, was he justified in placing to the credit of Jennings' personal account the moneys of the First National Bank of Mount Vernon on a check by Henderson for \$9000? The testimony of Jennings further is that there was no reason why he was pressed, and in point of fact, he was not pressed to pay this debt to Au-caigne, and therefore he could not have had any wrongful motive in this transaction.

" You are also entitled to consider the credibility of Henderson. Henderson, as the testimony shows, is a lawyer somewhat on in years, who has practiced law in the County of Westchester for many years. It also appears, not that Henderson is now friendly to the defendant Jennings, but at the time when the defendant Jennings finds himself under indictment, sues him for \$25,000 for lawyer's fees — the kind of an action which any man who loves his profession takes only as a last resort against the client. It is for you to say whether Mr. Henderson is a friend of Mr. Jennings, and whether from his appearance and all the facts and circumstances, you believe what he said, or you believe what Jennings said on this matter.

" We now come to the Kennard count. Kennard, as has been frequently said, was a lawyer by profession, who was engaged in a legitimate business — this couple-gear business. This is the second indictment, sixth count, dated August 1, 1910, and involves \$6000. A promissory note for that amount, dated July 8, 1910, payable three months, drawn by Kennard and endorsed by Couple-Gear was given concededly to Jennings as an accommodation note. This note was payable at the Mount Vernon National Bank. On July 29 Kennard's check to his own order for \$6000, endorsed by himself, marked 'Paid' at Mount Vernon National Bank, August 1, 1910. The testimony of Kennard is that he gave this note as a favor to Jennings, and he gave the check to Jennings at the same time, and that he did not know what became of the proceeds of the note or the check. At the time that this note bears date, namely, July 8, 1910, there were obligations of Kennard and the Couple-Gear in the Mount Vernon National Bank of somewhere in the neighborhood, I think, of about \$12,000. There were obligations of Kennard on two notes at Oneonta of somewhere in the neighborhood of \$12,500. At the moment I

do not recall whether the Kennard notes at Oneonta were endorsed by Couple-Gear or not. But you may assume, I think, that the liability of one was intended to be the liability of the other, because Kennard was, to all intents and purposes, the Couple-Gear Company. Kennard says he gave the check for \$6000 contemporaneously with the note, and his memory did not serve him, nor, as I recollect it, did the memory of Mr. Jennings serve him as to whether the note was given actually on the 8th of July or on the 29th of July. But it does not make any difference, because that lapse of time, unless my recollection fails me, is a matter of no consequence. A note was given, the check was given, and the proceeds went to Mr. Jennings.

"It is the theory and the interpretation of the expert for the Government, Mr. Rank, that this \$6000 check of Kennard's was used to pay \$6000 out of \$6500 to take up the check of Jennings on the First National Bank of Oneonta that had been credited to the account of E. K. Stallo at Mount Vernon on July 19, 1910, together with \$500, and that check, the check of Jennings, had been given to meet a check of Stallo's dated July 13, 1910, to the order of Jennings for \$7152.10, which Jennings had deposited to his credit in the First National Bank of Oneonta.

"As to that certain testimony was taken, after Mr. Rank's testimony was heard. But Mr. Rank, who, I think all are agreed, has testified in this case with great care, with no partisan attitude or bias, but as an upright officer of the Government, says in regard to this transaction, that he is not certain as to whether the \$6000 were applied for that purpose, but that that represents his best theory and his best interpretation. What became of the \$6000 is one of consequence in your deliberations as throwing light upon the question as to whether the passing of this money on the accommodation note in question was a violation of the statute.

"We now come to the Oneonta deposit counts. Those are Counts 3 and 16. It will be remembered that Jennings paid out \$5000 in the White Plains Development situation on February 1, 1910. The \$5000 which Jennings paid Farley & Rumsey on February 1, 1910 is charged against Jennings' account. At the opening of business February 1, 1910 Jennings had to his credit in the Mount Vernon National Bank \$1036.96. There

was placed to his credit the sum of \$5000 in the manner herein-after stated; the \$5000 by means of a credit ticket of \$5000, by transfer of that amount which stood to the credit of the First National Bank of Oneonta at the Mount Vernon National Bank to the account of Jennings. Against this total of \$6036.96 was drawn a check to Farley & Rumsey of \$5000, leaving a balance to the credit of Jennings at the end of the day of \$950.71, three small checks immaterial to the issues here having been drawn. At the commencement of business on February 1, 1910 the Oneonta Bank had on deposit at the Mount Vernon National Bank \$14,000. At the close of business the Oneonta Bank had to its credit on deposit with the Mount Vernon National Bank \$9000. The theory of the Government is that the Mount Vernon National Bank was liable to the First National Bank of Oneonta for \$5000. Therefore, that \$5000 thus drawn out of the Mount Vernon National Bank was the funds of the Mount Vernon National Bank. The theory of the defense is that Jennings had full power over any deposits of the Oneonta Bank at Mount Vernon National Bank, and that if there is any claim it does not in any event avail to the Mount Vernon National Bank, and that therefore the defendants cannot be found guilty on these counts of the indictment.

"While we are on this subject of the Oneonta deposit counts, I can interrupt the history of the facts to instruct you as to the law. When a depositor deposits money with a bank, that money becomes the property of the bank, and the depositor then becomes a creditor of the bank. There are many reasons for that. The rule of law rests in good sense, which I need not stop to detail. But let me give you one simple situation. Suppose you, Mr. Foreman, deposit money in the City National Bank. If that money after a deposit always belonged to you, in the first instance, if that money was earmarked, so as to retain its identity, then you would have a preference over other depositors in the event of the failure of the bank. And so for that and many other good reasons, the law is that when a man deposits money or funds with a bank, that money and those funds become the property of the bank, and the relation between the depositor and the bank is the relation of creditor and debtor. Therefore, when the Mount Vernon National Bank paid out its funds on a check of the First National

Bank of Oneonta, or to the credit or for account of the First National Bank of Oneonta, the Mount Vernon National Bank was paying out its own funds. When, however, you come, in that connection, to determine whether or not the defendants or either of them are guilty of these charges that revolve around the so-called Oneonta deposit counts, you have a right to consider what authority was given to the defendant Jennings by the Oneonta Bank; to what extent he was authorized to use that authority, and in what manner he did use it. And, if you believe that he had full authority from the Oneonta Bank, or such authority as authorized him to do the acts which he did, you may take that into consideration upon the question of intent as to whether, when these amounts were drawn out for account of Oneonta, out of the funds of the Mount Vernon National Bank, they were so drawn in violation of the statute, or were not so drawn.

"Finally, we come to the Oneonta deposit counts, mentioned in the first indictment, as the 4th and 17th counts, having to do with \$6000 dated January 25, 1910. R. W. Jones, Jr. had an account with the Mount Vernon National Bank. That account on December 15 was a substantial sum — in the neighborhood of \$34,000. There was credited to the account of Jennings out of Jones' account on December 15, \$7000. Jones testified that he allowed Jennings to use money out of his account. He said that it was a comparatively small sum. Jennings testified that he asked Jones for permission to use that money, or to use money; that Jones gave that permission, and that there was practically no limit placed as to the amount that could be used, and more especially so, in view of the fact that Jones stated, as Jennings says, that he did not expect to use this money at the Mount Vernon National Bank for some time to come. That testimony, together with other testimony which has been fully argued out before you by counsel is in your minds, and the credibility on this point I will not delay to consider. The credits from Jennings to Jones are shown by credit slips 142 and 143 — from Jones to Jennings, I should say. The debits against Jones are shown by debit slips 139 and 140. The amounts making up the above \$7000 being \$2000, and \$5000 respectively, and both debits bearing the notation 'Do not use in bal. H.T.J.' On that date Stallo's account was debited with

\$8000 and Jennings' account credited with \$8000 from Stallo's account. So Jennings' account is credited in toto on December 15, 1909 with \$15,000.

"On December 20, 1909 there was transferred from the account of R. W. Jones, Jr. to that of James H. Moran \$4000, and on December 15, 1909 Jennings paid to Farley & Rumsey the sum of \$10,000 in connection with White Plains transactions, to obtain one of the adjournments in the foreclosure sale. On the day before, namely on December 14, 1909, Raymond issued a cashier's check countersigned by Jennings for \$5000 to the order of James Talcott. This amount was charged against Jennings on December 15, 1909, as appears from the stub of the Mount Vernon National Bank, on the Citizens Central Bank, the Citizens Central Bank being one of the principal reserve agents. Jennings thus owed Jones a total of \$11,000, made up of the \$7000 credited to Jennings from the Jones account on December 15, and \$4000 of Jones' credited to Moran's account on December 20. The theory of the Government is that it became necessary for Jennings to replace this \$11,000. On January 25, 1909 there was to the credit of Jones at the opening of the business \$219.88. On that day there came to the Mount Vernon National Bank a check — Exhibit 148 — which Jones had drawn to the order of a man named E. A. Wiltsee for \$5517.71. There was not enough money in the account of Jones to honor the Wiltsee check, and there was placed to the credit of Jones on January 25, 1910, the sum of \$6000, as appears by the credit slip — Exhibit 147, which reads, 'Credit R. W. Jones, Jr. \$6000 by First National Bank Oneonta,' with the pencil notation, 'Do not use in bal.' in Raymond's handwriting. This \$6000 is the amount charged in the indictment.

"In regard to this, the defense, in its testimony, states that it had full right to use this \$11,000; that the relations between Jennings and Jones were such as to corroborate that testimony and to warrant, as between themselves, the use of this money. There again, it is for you to say who is to be believed in that regard, Jones, Stallo and all these men having in one form or another an interest of their own, and that interest is in many instances to protect themselves against suits of one kind and another. And in the case of Jones and some of the rest of them, that interest

goes a bit farther, because they do not desire to appear in this community as men who are unsafe, and men who may not be trusted. Jones is connected with a bank, as at least were some of the others, and it may be a very bad thing for the financial world to know the kind of way they do business. That is their interest, together with the other interest that I have spoken of, and over and against that is the interest of the defendant to which I have referred, and you will determine from all the circumstances who are telling the truth.

"On February 2nd, the balance of Jones on the opening of business was \$698.24, and on that day there came to the Mount Vernon National a check of R. W. Jones, Jr., dated February 1st, to the order of the Manhattan Securities Company for \$3599.34, and on February 2 there was placed to the credit of Jones per credit slip \$3500, with a notation in Raymond's handwriting 'Do not use in bal.' and initials 'H.T.J.' On February 10, 1910 Jones' balance at the opening of business was \$388.25, and there came on that day to the Mount Vernon National Bank a check dated February 9, 1910, to the order of the National Reserve Bank for \$1500, and on that day a credit in favor of Jones per credit slip of \$1500 reading 'Credit R. W. Jones, Jr. by First National Bank Oneonta by \$1500' with pencil notations 'Do not use in bal.' The three amounts just referred to aggregate \$11,000, and it is claimed that this total of \$11,000 which is credited to Jones made up the \$11,000 which had previously been debited against Jones by the \$7000 placed to the credit of Jennings and the \$4000 placed to the credit of Moran.

"We now come to the Killeen count. I have already informed you that that count is dismissed as against Jennings. In a case of this character, it is very difficult for counsel, and especially difficult for the court to determine in the early stages of the case just what is relevant testimony, because these transactions are so interlaced that counsel find it necessary, and conscientiously so, to state to the court that a transaction which is intended to be shown will be connected in due time with another transaction. And that is the way that two transactions in connection with the Killeen matter came into the case, which I should not have permitted in at all, if I had known the testimony as it now appears.

Those two transactions came into the case upon the theory, among other things, that they would show a lack of responsibility of Killeen. Therefore, I want to dismiss from your minds the first two Killeen notes, which are not the subject-matter of the indictment. You may dismiss that from your minds, because it is conceded that the \$2360 note, the subject matter of the indictment, when signed by Killeen, was signed by a man known to have no responsibility. But so that there may be no injustice to the defendants I may say in regard to the first two Killeen transactions, that neither of them was criminal, and it may very well be that both of them were done in the exercise of an honest judgment, and in the interest of the bank. The first transaction was to enable the bank to collect a judgment, which was proven to be a bad debt. No money of the bank went out on that, and I think the law says that the bank must charge off after six months a bad debt, yet, if that provision is not complied with, the non-compliance does not constitute a crime, and only is a matter for inquiry by the Comptroller of the Currency, who may then take certain steps. Now, the Comptroller of the Currency is not bothering himself, nor is it necessary to bother himself with some little detail of that character, if he finds that generally speaking conditions are good. So, dismiss that entirely.

"I am a little inclined to think that that transaction, to say the least, may have been meritorious and at least was not reprehensible. The next transaction has to do with the holding of certain Westchester Brewery stock, where again the law was technically evaded, for which there would have been ample remedy, but the doing of which was in no way, under this evidence, any reflection upon the defendant. I said 'The law.' That is a little inaccurate. I think it is the rule of the Department rather than the law.

"Jennings owed the National Reserve Bank \$12,360. It is unnecessary for me, because by this time you are so familiar with it, to detail the situation between the National Reserve and the Mount Vernon National. At that time the Mount Vernon National needed money and wanted to raise money by a rediscounit of its notes with the National Reserve, which was one of its reserve agents. The National Reserve took a position which I think was most reprehensible and unconscionable; required,

before it aided this national bank in the straits in which it found itself, that it should in some way cause to be taken up this individual debt of the defendant Jennings, and provision had been made for that situation by obtaining two notes aggregating \$10,000, and that left \$2306 to be obtained somewhere. Under those circumstances the Killeen note was obtained — obtained evidently on the advice of Henderson. Now, do not lose the perspective. In this case can it be said on this count, in view of all the circumstances that then existed, as well as the history that we can see, that the defendant Raymond is to be held responsible on the question of intention to injure and defraud the bank, because he may have known, and you may find that he did know, that this \$2360 of a note was put in to pay Jennings' personal indebtedness in this emergency situation which was then presented. I leave that to your good judgment.

"The next series have been called the Broadway note count, the Behan count and Broadway bonds count. While I appreciate that this has taken long, we have got to give to this the time and attention which it deserves. In the first indictment, these counts relate to the transactions in connection with Broadway & 43rd Street.

"The Behan note was dated November 19, 1910, on demand, \$6750 with interest, signed by Behan, to the order of himself, which was endorsed Behan and Broadway & 43rd Street Building Co., John Hanson Kennard, Treasurer. There was due from the Broadway Company to Mrs. Mary A. Fitzgerald \$6258.50, for ground rent for November, 1910. That rent was paid on November 19, 1910 by the check of the Broadway Company, per Jennings, Vice President, and Kennard, Treasurer, to the order of Mr. Dwight, attorney for Mrs. Fitzgerald, which check being dated November 15, 1910. The Behan note was dated November 19, 1910, the date when the check to Mr. Dwight reached the Mount Vernon National Bank, and the books of the Mount Vernon National Bank show that on November 19, 1910 at the opening of business, the Broadway Company had to its credit \$2926.23, and there was deposited to the credit of the Broadway Company \$6750, the proceeds of the Behan note, and that amount was drawn out by the check, Exhibit 224 to Dwight's order of \$6258.50.

"In regard to that and all the other matters connected with the Broadway & 43rd Street situation at this time, you have heard the testimony of Mr. Jennings, who says that he believed that if the Broadway & 43rd Street situation could be saved, it would inure to the benefit of the bank.

"The Government urges that Jennings was heavily interested in the Broadway & 43rd Street enterprise, and knew that it was in difficulties, and that he had no right to authorize the discount of notes of the character of the Behan note. Jennings says that none the less he believed, in view of the interest of all these various things, and this whole situation, that rather than let the whole enterprise go to pieces, every effort should be made to save it. That is all an expression of opinion, which has been said so many times on both sides, and there is so much testimony on it and there has been so much argument, that I think it is unnecessary for me to review that general situation with which I am confident you are familiar.

"We now come to the Broadway bonds counts, being the 5th, 13th and 18th counts, January 7, 1911, \$16,250. You remember the first mortgage on the Broadway Building was the building loan mortgage of Mrs. Fitzgerald for \$500,000, and behind this was a second mortgage bond issue of \$600,000.

"On October 21, 1910, the C. L. Gray Construction Company delivered to Raymond for the Mount Vernon National Bank, 25 Broadway bonds, numbers 501 to 525 both inclusive, to be deposited as collateral on a note given to the Hub Building Company for funds advanced to the Gray Company, and receipt of the bonds was duly acknowledged by Raymond. There has been so much talk about the 25 bonds in this case, so much testimony so recently given, that I shall not further delay to go into the detail of that transaction nor into the detail of the so-called Stallo-Gray note, which is more particularly the subject matter of testimony by Mr. Raymond and by Mr. Jennings, and of testimony by the various persons connected with the Oneonta Bank during the last day or two of the trial. In substance and effect, what the bank did at this time was to buy \$25,000 par value of bonds, or get \$25,000 par value of bonds for which it gave \$16,250. You are familiar with the condition of the company. You are familiar

with the whole situation, I am sure. Within the rules that I shall lay down, the question you will be called upon to answer is whether the defendants were justified in entering into that transaction. On the one side you have the Broadway & 43rd Street Company heavily indebted, and on the other side you have, it is claimed by the defense, an earnest and conscientious effort to save the situation, with the building now close on to completion. And in this connection there is one thought that has not been adverted to by counsel on either side — the question of personal interest is a question which I have frequently said is for you to consider. Was there any prospect when this \$16,250 transaction took place of Jennings getting any pecuniary result out of the Broadway & 43rd Street situation? Were there so many things that had to be attended to before that could happen, that the possibilities of personal pecuniary profits were remote. And if you say that you think that his chances in any event at that time, of pecuniary profit out of this transaction were remote, then, that is to his avail on the question of intent. If you think, on the other hand, that he was thinking of himself, as well as of the bank, or that he was thinking more of his interests than of the interests of the bank, then, that will influence you on the question of intent. The same general situation applies to the purchase of bonds which resulted in a credit of \$2400 — pretty much the same picture might be drawn. And again I repeat, as this is so familiar to you, I shall not delay to recount it now.

"It is true, as was stated by counsel for the Government, that a national bank may not invest in real estate except under certain specific circumstances, and that it may not therefore invest in real estate mortgages. That is the law and the policy of the Government, and an investment in real estate mortgages or any real estate would at once, if called to his attention, invite investigation by the Comptroller of the Currency. But a violation of that provision of the statute does not make the defendants guilty of a crime. That violation goes only to the question of intent. And even though that provision of the statute was violated, it is for you to say under all the surrounding circumstances, whether it was violated in such manner and for such purpose as to construe from it that intent which the statute requires.

"Just one more thing before we leave that transaction. You remember the Stoll incident, where it was claimed by the Government that a small number of bonds were bid up to 80 in order to create a fictitious value as a preceding step to the subsequent acquisition of these bonds. The defense, on the other hand, says and it is the testimony of Mr. Jennings that the amount which was bid for those bonds was so bid in order, not by the sale of a very small lot of bonds at a low figure to give this enterprise what is sometimes called in financial circles a black eye, worse than that, which it had already sustained. There, again, you will apply your knowledge of men and things as to what was the real intent of that transaction.

"I have so far so fully outlined what I called in the beginning the mathematics of the case, that I think that it is unnecessary for me to go into details in regard to the Broadway note account, and the so-called Greenwood counts for \$9000, and the Hub counts, which are in a sense so inter-related with Greenwood and these two neighboring enterprises. I am quite sure that those matters are sufficiently clear in your mind not to justify me in detaining you further in a charge which has already taken so long.

"That brings me to the St. Louis draft count which I have dismissed against Jennings. The amount was \$850. That count remains as against Raymond, because that draft was in Raymond's handwriting. There is evidence that he knew that such a draft was drawn. Raymond was not an officer of either the Hub or the Broadway. Jennings testified — I don't know whether any of you noticed at the time, but my recollection is that it was in the nature of an admission of his own, a voluntary statement, an answer, I think, to some question I asked him, Jennings testified that he did not let Raymond know about any matters except those of the bank, and he used the expression at least once, and perhaps more often, in referring to transactions there, 'I told' or 'we told' Raymond to put it through, and he put it through. Now, remembering the interest that Greenwood had in the Hub Company, remembering his activities in the Broadway & 43rd Street, and his relation to the Gray people, even though I think at this time they had ceased, it is for you to say whether you think Mr. Raymond willfully drew this draft or participated in the

drawing of it for \$850 on Wilfley of St. Louis with the intent, in his action and in his mind, to injure and defraud this bank.

"Finally, I think I shall only refer to the McDonald Estate counts. You are at liberty, I may say, to call for any exhibit, if you think it will be of service. I am rather inclined to think that counsel on both sides will be agreeable and will be glad to have you take some of these charts, because I have found it highly difficult to carry the figures in mind with an opportunity of making notes, and it would be amazing if every one of you were able to carry the figures in your mind. Exhibit 109 is the check for \$23,139.23. That is the check which Stallo says he gave Jennings, and wanted Jennings to have it countersigned by the Surety Company. Jennings says that that was not the conversation; that the money that was in the Mount Vernon National Bank at that time was the money of the McDonald Estate, obtained from Insurance moneys and they both knew, Jennings and Stallo, that that check required the counter-signature of the National Surety Company. It is the testimony of Jennings, however, that the relations between these men were so close, that he relied upon Stallo's being able to arrange for the necessary counter-signature, or for another check in place of this check. And it is a fact in this case, that Stallo has not fulfilled the obligation which he was called upon to carry out under his solemn written agreement, and you are to judge between Stallo and Jennings on any question of credibility. And, you are to take in that connection on the one hand, to repeat, the interest of Jennings in this trial, where his liberty is at stake, and on the other hand, the kind of a man who has so conducted the administration of the affairs of his daughters that it has become necessary to appoint a joint administrator so as to safeguard the funds over which he had control, and the kind of a man who put his name to paper, either to accommodate others, or in the nature of payments, and puts it to one piece of paper after another.

"Now, when you weigh the kind of man both of these men are on the question of credibility, on the question of veracity, by the test of what the situation was, you can determine who is telling the truth about this check for \$23,139.23.

"That check was replaced by three credits. You remember the

Main & Dietz note of \$15,000. The Main & Dietz Company was not obligated to pay that \$15,000. It was an accommodation note. It was under no obligation whatever — it had received nothing for it. It was a note made purely and simply at the request, as I recollect the testimony, of Mr. Jennings, and the proceeds of that note went concededly to pay part of this \$23,139.23.

"In respect of that Main & Dietz note, which is the subject matter of one of the counts of this indictment, you are to consider whether the conduct of the defendants or either of them, within the legal limitations that I shall directly state, was such as to justify them to pay out the moneys of the Mount Vernon National Bank in that regard. You will remember the \$7139.23, which, together with the \$1,000 that was credited, as I recall, to the Jennings account, went to make up this total.

"I am glad to say that I have now completed all that I wished to say in regard to the facts, in the counts of this indictment. But I want you to bear with me just a little bit longer while I refer briefly to certain outside or collateral transactions which were permitted in evidence. It was thought that they were relevant to the transactions charged in the indictment. It may possibly be that some of you gentlemen have known, because of your wide acquaintance, some of the witnesses, outside of the court-room. You may have noticed that many of these witnesses were known to me. It is a very difficult psychological problem to change your mind in the jury box as to the credibility or lack of credibility of a man whom you have met outside of the jury box. But so far as you possibly can, if perchance any of you have known these witnesses, try to clear your minds of your impression of them obtained before you came into this trial, and judge them by their conduct here, and their relation to the case, and all the circumstances.

"The testimony as offered by the Government in regard to the so-called Kiester transaction was partly to show that the defendant Jennings was engaged in questionable transactions — that is to say, in getting a man to sign notes, the contents of which he did not know, or the amount of which he did not know. And the Government introduced the testimony also upon the theory

that it might enlighten you as to the difficulties in which the Broadway & 43rd Street Company had found itself.

" You heard Mr. Jennings' testimony that Kiester did know in substance what was in those notes, or what was to go into those notes, and you heard Kiester's testimony in substance, that he did not. And, as you will remember, I called attention to the fact that Kiester was in a position to know the precise condition of that building enterprise; that the amount of the note \$5365 was an odd amount which might have been a reason for not filling it in at the time, and you are to determine whether one man or the other was telling the truth, or whether they were both endeavoring to tell the truth, but the recollection of one or the other was at fault. But be careful not to allow any conclusion that you come to in regard to the Kiester transaction to lead you to conclude that the defendants are guilty of a count, or any or all of the counts of these indictments, unless you are satisfied as to the guilt of the defendants in respect of the various counts of the indictment.

" The one signature Hub matter that has been referred to — it is for you to say whether under all the circumstances, in view of the comparatively small amount drawn, there was any sinister purpose on the part of Jennings in that regard. On the other hand, the fact that there was but one signature checks in some instances may be of some service to you as determining whether Mr. Greenwood knew what the situation was when he engaged in various transactions here referred to.

" The Gray notes discounted in April, 1910 are practically relevant only as showing the relations of the parties, and it is but fair to say that those were discounted at a time when, in accordance with the evidence in this case, there was no intimation but what the Gray Company was a capable and solvent concern in its line of business.

" The general situation at Oneonta you are familiar with. Let me repeat it very briefly. Jennings bought into the Oneonta Bank with associates, all of whom borrowed the money to buy in. There is no doubt that almost from the day he set his foot in Oneonta a series of misfortunes overcame that bank, over which none of these men had any control. Jennings then, upon his motion, got the authority of the bank to sell recognized securities in a

substantial sum and to take in place thereof commercial paper at six per cent. You have heard the testimony adduced as to the reason why that was done, or the reasons claimed. The Oneonta Bank situation is relevant to this inquiry as throwing light on the Mount Vernon situation. Was that resolution passed at Oneonta the ultimate result of which was that good securities in a large amount for a bank of that character were sold, and this commercial paper purchased, was that resolution offered having in mind the use of money which would aid these enterprises that had led into the Mount Vernon National Bank, or were those good securities sold and this paper bought in good faith, for the reason stated by Jennings when he was on the stand. That situation I am sure stands out like a picture thrown on a screen — the winter of 1910 and all that followed and the relation of the Oneonta Bank to the Mount Vernon National Bank has not come into evidence in this case as proving any crime committed by the defendants at the Oneonta National Bank, but for the purpose of enabling you gentlemen to understand the relations between the banks and their interlocking, and whether in view of all the facts, the acts complained of as having been done at Mount Vernon violated the statute.

"I need not spend any time upon the Stallo note for \$10,000 or the Zimmerman & Forshay matters, because they were ably and fully discussed and argued.

"We now come to the final consideration that you are to take with you in the jury room, that is to say, an understanding of the law. I think if you will follow me closely that you will find that the law sustains in this regard its tradition of being based on common-sense, and notwithstanding that it has become somewhat customary to doubt the wisdom and the application of the law, thoughtful men who are students know that the law is, as a rule, the result of human experience, and if simply stated and clearly understood, it is nothing more nor less than an embodiment of the rules that govern you in your daily lives. The statute under which these men stand indicted reads, so far as relevant :

'Every president or cashier of any national banking association who willfully misapplies any money, funds or credits of the association, with intent to defraud the association or any other com-

pany body politic or corporate or any individual person, shall be deemed guilty of a misdemeanor and shall be imprisoned not less than five years nor more than ten.'

"As used in this statute, one who does the prohibited act willfully, does it with knowledge and a purpose to do wrong, and I think no other definition of the word willfully is necessary, except perhaps to say that a reckless act is a willful act.

"The willful misapplication made an offense by the statute charged in this indictment, means the misapplication for the use, benefit or gain of some person or company other than the national banking association whose moneys, funds or credits are said to have been misapplied. But it does not necessarily mean larceny or theft. It is not necessary that the person charged with the offense of willful misapplication shall have been previously in the actual physical possession of the moneys, funds or credits, alleged to have been converted, under or by virtue of any trust, duty or employment committed to him. Nor is it necessary to a willful misapplication, that the officer committing the same should derive any personal benefit therefrom. The theory of the law is that the officer is a trustee; that he has certain duties, and one of those duties is that there shall not be willful misapplication, with intent to injure or defraud the bank, of any money, funds or credits of the bank, and it becomes immaterial whether he benefit himself or not. He is the watchdog at the door, and the law says that he must be deemed as guilty, if he willfully fails to do his duty, with an intent to injure or defraud the bank. The law says that is a violation of the statute.

"When the funds of a bank are unlawfully taken from its possession and willfully misapplied by converting them to the use of any person other than the bank, with an intent to injure or defraud the bank, the offense created by the statute is committed. The criminal act may be done directly or personally, or it may be done indirectly through the agency of another, and if the officer charged with the crime had, as such officer, such control and power of management as to direct the application of its funds so as to constitute a willful misapplication, and if he actually did make such direction or cause such misapplication to be made, he is as guilty as if the act were done by his own hands. If a willful

misapplication of the moneys, funds or credits of a bank be once made, the criminal character of the act is not changed by the fact that it becomes subsequently known to the officers of the bank and that they actually or impliedly consent thereto by taking no action in regard to it, or in any other manner, or that restitution be subsequently made. Nor is it essential that any cash money be withdrawn from the bank's treasury or its vaults to constitute the offense of willful misapplication. The transfer may be made by means of checks or credit or debit slips, or other or customary bank documents. To complete the crime of willful misapplication, there must not only have been a conversion of moneys, funds or credits to the use of someone other than the bank, but such conversion must have been made with the intent to defraud, as charged in this indictment, on the part of the defendants or either of them, to injure or defraud the bank.

"Conversion is an unauthorized assumption or exercise of the right of ownership over property belonging to another to the exclusion of the owner's rights. An unauthorized act which deprives one of his property either permanently or for an indefinite time is a conversion. Therefore, in order to find in this case a willful and criminal misapplication of the funds of the bank by this defendant, you must find that the defendant did, without authority by the acts charged in the indictment and by the said willful misapplication, deprive the bank of its property, that is to say, its money, funds or credits, either permanently or for an indefinite period.

"You will doubtless observe that in regard to the crime of willful misapplication, there must be an intent to injure or defraud the bank. It is a rule of daily life, which has become a rule of law, that the law presumes that a man intends the legitimate consequences of his own acts. It is no defense to a wrongful act knowingly and intentionally committed, that it was done with an innocent purpose. The intent with which an act is done is often, if not usually, more clearly shown by the act itself than by the words, explanations or reasons of the actor. It is impossible to penetrate the human mind and search out intent from the mind itself. Intent must be derived from the acts of a man and from what a jury of his peers may, in the light of their judgment and

experience and commonsense, infer as the result of the acts which it is charged were done with an improper and a wrongful intent to injure and defraud the other.

"It is not necessary to believe that the defendants or either of them intended to wreck the bank or bore any malice towards the bank. The intent is the intent to injure, and each transaction here charged must be taken by itself. You must say and ask yourselves if these defendants or either of them willfully misapplied moneys of the bank with intent to defraud or injure, even assuming that, generally speaking, it was their hope and desire that the bank should be a successful institution. And that same test as to willfulness and intent is to be applied in the consideration of all the counts of embezzlement that are charged against Jennings.

"Embezzlement has been stated to you in the argument of counsel very clearly. Embezzlement is the crime which consists of taking the property of another to your own use, when that property is lawfully in the first instance in your possession. There is a good deal of confusion, I think, among men not lawyers as to the distinction between larceny and embezzlement. If I walk into your room and see there a piece of property and take it away and convert it to my use, that is larceny. But if you give me your property, entrust it to me and ask me to keep it and instead of keeping it for you and returning it in due course, I convert it to my use, that is embezzlement. And it is with that offense that the defendant Jennings is charged in several instances. But there again, you must find a willful act and an act done, the result of which avails to the financial and pecuniary benefit in the particular case charged, of the defendant Jennings.

"Much reference was made in argument to the question of character. I think very often there is considerable confusion between the word character and the word reputation. Character, of course, means that which you are. Reputation is that which it is said you are by the common speech of people. And yet, when it comes to a trial in courts of justice, for all practical purposes, character and reputation are the same, because the common speech of people has been found a very sure guide in most instances, on the question of repute. And that is why the question

is asked, whether these witnesses as to character knew other people who knew these defendants, because it is thus only that reputation may be ascertained.

"Proof of good character or reputation raises the question whether a man who has it is likely to commit the crime charged. Where the evidence otherwise is evenly balanced good character will and should turn it, and evidence of good character, for honesty and veracity, will actually outweigh evidence which might otherwise appear conclusive. Yet good character is not only valuable in doubtful cases, but it is entitled to be considered, though the crime charged is serious, and the testimony tends strongly to establish the guilt of the accused. It will sometimes of itself create a doubt when without it none might exist. Yet, if in your judgment the crimes charged in the indictment have been conclusively proven to your satisfaction beyond a reasonable doubt, good character does not avail.

"When you retire to your jury room, I hope that you may have this in mind: While every juror should adhere to his honest individual opinion as to the facts, and should not abandon that opinion unless honestly convinced of the error of the opinion, yet, it is the duty of every juror to fairly and openly discuss all the facts in the case with his fellow jurors, in an honest effort to arrive at a verdict.

"In arriving at your verdict, you may find a verdict of guilty or not guilty as to either or both defendants, on each, any or all of the counts of the indictment which are still left in the case. You may find both defendants guilty on some and not guilty on others; guilty on all or not guilty on all. You may find one defendant guilty on one count as to which you may find the other not guilty or vice versa.

"If there should be a conflict in the evidence given by the defendants and that given by a witness whose position is such that he had a personal interest, that you are to consider. If he had no personal interest, that you are to consider. And in considering and weighing the evidence, you are to remember what I have said, get clearly in your mind the situation as it was, the interest or lack of interest of the witnesses, the manner in which they have answered and conducted themselves, and apply under your

oaths that same good rule of commonsense that you apply in the daily conduct of your business.

" Before I conclude with the instruction as to what is meant by reasonable doubt, in this full review which I have made from one standpoint, but mere outline from another, let me repeat that my omission or lack of omission, my apparent emphasis or lack of emphasis as to any of these facts, is to convey no impression on your mind as to any opinion I may have. So, as I stated in the outset, the sole purpose in reviewing facts is to get the mathematics of the case in your mind, where I am confident it already was, feeling as I do, that you have the larger outlines of the case perfectly under consideration.

" It is fundamental that every man accused of crime and brought to trial, as I said before, is presumed to be innocent until he has been proven to be guilty beyond a reasonable doubt. In civil cases the jury must be guided by the weight or the preponderance of evidence — that is, by their conviction as to whether the testimony inclines in favor of one party or the other, be it ever so little, so long as the weight can be properly decided. But in criminal cases it is not sufficient to justify a verdict of guilty that the weight of evidence may balance the scale against the accused rather than in his favor. The evidence must be so preponderating as to leave no reasonable doubt of guilt. If the evidence justifies, in your judgment, your finding that the accused are guilty so as to exclude any other reasonable conclusion, you should declare them to be guilty. But if, after consideration, you can reconcile the evidence before you with any reasonable hypothesis consistent with innocence, you should so do, and find the defendants or either of them not guilty.

" This well-established and indeed ancient rule does not permit to you, however, a mere surmise or guess or conjecture that the accused or either of them are possibly innocent. You cannot base your judgment upon a merciful hope; for a reasonable doubt, as the words imply, is a doubt based on reason; having some reason to it. It is such a doubt that would be entertained by a reasonable man after an impartial and thorough review of all the evidence and all the facts brought to his attention. If after such review and consideration you can honestly say that you are

not satisfied of the defendants' guilt, then you have a reasonable doubt. If, on the other hand, you have a settled opinion, and honestly believe the accused is guilty, and that opinion is of the degree of certainty that you would require in acting upon the most important affairs of your own life, then you have no reasonable doubt. I say this to you confident that whatever verdict you render will be rendered justly and conscientiously, and with that thought in mind, the case is now yours.

"THE COURT: I am asked to charge and I do charge, the request being made by Mr. Bacon on behalf of the defendant Raymond more particularly, and I assume on behalf of both defendants.

"MR. BACON: I think everything I have asked has been charged, except perhaps the request for an instruction as to the effect of evidence of negligent, unskillful or dangerous banking.

"THE COURT: I am asked to charge and I do charge:

'That although they may be of the opinion that there was negligent, unskillful and even dangerous banking, that evidence alone is not sufficient to warrant a conviction upon any of the counts of the indictments and therefore those occurrences and that evidence may be regarded as of course important when taken in conjunction with the other evidence, but standing by themselves indifferent, or, at most, not proof of guilt.'

"THE COURT: I am asked to charge that, Mr. Battle, I presume on the behalf of both of the defendants?

"MR. BATTLE: Yes, sir.

"THE COURT: I am asked by Mr. Battle to charge the following: 'If the Board of Directors authorized the discount of any commercial paper by the banks, before such discount and after the defendant had fairly stated the facts in regard to such paper to the Board, then the defendants are not criminally responsible for such discount.'

"That is charged, but in that connection, you are to take all the facts in the case and to decide from the evidence what was placed before the Board of Directors, what the defendants did and what the directors did, and whether after that there was an honest judgment exercised, or whether there was the willful and intentional act done which I have heretofore defined.

"I am asked to charge and I do charge:

'If, after the discount of such commercial paper the defendant reported such discount to the Board, without suppression of any fact in regard thereto, and the Board approved such discount, then the approval may be taken into consideration by the jury in deciding whether the defendants were justified in approving the original discount, and also:

'In deciding as to whether the defendants were justified in approving the discount of like paper thereafter.'

"That of course is to be connected with what I have already said, that if there was in your opinion an offense committed, such subsequent approval cannot cure the offense. The subsequent approval, as I have already charged, may be taken in connection with the facts in the case on the question of intent.

"I am asked to charge and I do charge:

'If the jury find that the defendant Jennings was authorized to draw against the account of the First National Bank of Oneonta with the Mount Vernon National Bank, then the defendant Jennings cannot be held criminally responsible in this case for drawing against said account and using the proceeds as he chose.'

"That is charged, in connection with the other matters that I have already charged. And you will remember in that connection that I have charged you as to the law affecting from the standpoint of strictly legal instructions, the status of the deposit of the Oneonta Bank at Mount Vernon.

"I am asked by Mr. Battle and I decline to charge the fifth request. I am asked to charge and I do charge that:

'Unless the jury find that the \$20,000 note made by Greenwood and endorsed by Marshall was discounted by the bank, then there can be no conviction on that count.'

"THE COURT: Are there any exceptions?

"MR. BATTLE: No, sir, except to the refusal of the one request.

"MR. WISE: I would ask your Honor to charge the jury that:
'A credit upon the books of the bank to be valid and create the relation of creditor and debtor between the parties having such credit and the bank, must represent value received by the bank in the shape of actual cash, or what is honestly deemed to

be the equivalent. Such a credit obtained by an unauthorized charge or a credit taken without consideration passing to the bank is no credit in the eyes of the law, and when the funds of the bank are drawn out under such a credit, they are wrongfully obtained.'

"THE COURT: I so charge, making it clear, however, that there need not be cash in the bank, but that there must be drafts or other property which the persons charged honestly believe are the equivalent of cash.

"MR. WISE: I ask your Honor to charge that at the time of withdrawing moneys from the bank, it is not sufficient that the men taking it out should have had a floating intention to return it at some time.

"THE COURT: I so charge.

"MR. WISE: I ask your Honor to charge:

'For a promoter of various enterprises to obtain the funds of a bank on the security of unmarketable bonds of his own enterprises at the risk of the interest of the bank is not proper and legitimate banking, and the entries on the books of the bank as loans and investments do not cure the fraud that is perpetrated upon the bank.'

"THE COURT: I decline so to charge, but leave the question of the transactions to the jury.

"MR. WISE: I ask your Honor to charge the jury, in passing upon the question of whether the loans in question were legitimate transactions or not, that they should ask the question and decide it, whether a man not in the position of president or cashier of a bank could have obtained such a loan.

"THE COURT: I decline so to charge, and leave the question just where I left it in my main charge, for the jury to determine the situation on the evidence.

"MR. WISE: I ask your Honor to charge that:

'It is not necessary that money leave the bank to constitute misapplication. The wrong can be committed simply by the transfer of credits.'

"THE COURT: I so charge. Before the jury retires, it has occurred to me that perhaps I ought to add this: That as affects the defendant Raymond, examine these transactions with a view

of ascertaining what knowledge he had in regard to those transactions. And in that connection it occurs to me that I omitted to call your attention to the fact that on the one hand it is claimed by the Government that the words 'Do not use in bal.' were purposely put upon these various credit and debit slips for a wrongful reason, and for a wrong purpose.

"While, on the other hand, the defendant Raymond has testified, that where transactions are not complete, that where there is something yet to be done in the transaction, which finally is balanced, that that phrase is a common and ordinary phrase used in the conduct of banks. It is for you to determine what the truth of that matter is.

"I think I ought also to say one other thing which I find on my mental memorandum in regard to the defendant Raymond. Something was made in the argument of the action of Raymond on that afternoon of October 31, 1910 in certifying that check of \$29,000 and some odd dollars. The crime of over-certification or wrongful certification is not here charged. But if it were here charged, the same principle of willfulness and intent would cover that crime as covers misapplication and embezzlement, and when the statute says an appropriate entry must be made in the books of the bank when each certification is made, the statute is directing itself to real things, and not merely to the technical situation. And so far as that certification that afternoon is concerned, I deem it but just and fair to the defendant Raymond to say that, in my opinion, no crime of over-certification was committed on that occasion, and that under those circumstances, so far as that is concerned, Raymond certified that check, believing that he had the right to certify it. And when I say that, I make no comment on what Raymond actually did know in regard to the history of those checks, whatever that may have been. But you must not take to the jury room any feeling that Raymond committed the crime of over-certification that afternoon, just because, although he used a deposit slip, he did not happen to be at Mount Vernon where he could physically make the entry.

"MR. WISE: May I ask the Court one more request? I ask the Court to instruct the jury that:

'The authority of the officers of the bank extends only to

legitimate transactions honestly intended for the benefit of the bank.'

"THE COURT: I so charge.

"The instruction requested on behalf of the defendant Jennings and refused by the Court is as follows:

'The testimony shows that the defendant Jennings was authorized to draw against such account and, therefore, he cannot be held criminally responsible for so doing and for using the proceeds of the Whiteplains Development Company or for replacing the amount therefore acquired by him from the account of R. W. Jones, Jr.'

The jury retired.

Thereafter the following communications were received from the jury.

"THE COURT: The foreman of the jury has requested me in writing that there be sent to the jury all tabulation sheets, discount and loan registers and minute books. The request of course will be granted.

(These exhibits were handed to Deputy Marshal Reed for delivery to the jury.)

Later, the following:

"THE COURT: I have received a communication from the foreman of the jury reading as follows:

'Kindly let us have all exhibits connected with Oneonta deposit counts 3 and 4 of first indictment.'

"Those exhibits will be sent to the jury. I assume that the jury from this communication indicate they desire to have such of the minutes of the Oneonta Bank as have been read in evidence, and therefore I will send to the jury, unless there be objection by counsel, the two resolutions which I understand and recollect were read in evidence.

Later, the following:

"THE COURT: The foreman of the jury has addressed a written communication to me asking for 'Security (bonds Nos. 501 to 525) Envelope of Broadway & 43rd Street.' The Marshal is directed to hand this exhibit to the jury.

Later, the following:

"THE COURT: The jury has, through its foreman, requested

letter from Gray Construction Company stating bonds from 501 to 525 given as collateral. Counsel are agreed that this letter is U. S. Exhibit No. 277, and the Marshal is directed to take this exhibit to the jury, in pursuance of their request.

Later, the following :

"THE COURT: The jury have requested 'that there be sent to them Greenwood's letter, 'In reference to Fairchild, amount of \$20,000, Count No. 1 first indictment and also all other exhibits in reference to same.' They have further requested exhibits in reference to the Broadway bonds account, \$2400, Count No. 14 of the first indictment. They have also requested, 'Hub account \$20,000, Count No. 6 first indictment', which evidently means exhibits in reference thereto. The Marshal is directed to take these exhibits to the jury.

"As one of the exhibits which relate to the so-called Hub account (Count 6 first indictment) is contained in the certificate of deposit book, to wit, Exhibit No. 29, it is consented that the memorandum may be sent to the jury, calling their attention to that fact, in view of the fact that the certificate of deposit book has been sent into the jury room, in response to their request for exhibits in connection with Count 1 of the first indictment.

"The memorandum is as follows: 'The certificate of deposit to the order of the Hub Building Company and National Surety Company for \$17,000 which relates to the Hub count \$20,000 (Count 6 of first indictment) is contained in the certificate book already before the jury. This \$17,000 certificate is U. S. Exhibit 29, and the certificate number is 111 in the certificate book.'

Later, the following :

"THE COURT: The jury has made the following request : 'We would like credit and debit tickets of Main & Dietz count 7.'

"With consent of all the counsel the following memorandum is sent by me to the jury, together with the two exhibits mentioned in said memorandum, to wit: Main & Dietz, the credit ticket U. S. Exhibit 120 herewith sent and there was no debit ticket. The debit consisted of the note (entered in loan and discount register under date of July 26, 1910) of which U. S. Exhibit 182 is a renewal.

"The jury also ask for 'The Behan note et cetera, Count 8.' The words et cetera I construe to mean other exhibits in immediate

connection therewith, and with consent of counsel I send to the jury Exhibits 222, 269 and 224.

Later, the following :

"THE COURT: I have received a further request from the jury for exhibits on Greenwood account, being the 10th count, and also the Broadway & 43rd Street note account, being the 11th count. The Marshal is directed to take the exhibits to the jury, together with the following memorandum, which memorandum is sent with the consent of counsel :

'Greenwood Count No. 10. You have one exhibit in minute book of Mount Vernon National Bank, resolution in regard to \$9000 note referred to minutes of July 5, 1910.'

"The jury has also requested the exhibits on White Plains counts 1, 3 and 4 of the second indictment. The Marshal is directed to take the said exhibits to the jury.

Later, the following :

"THE COURT: The jury requests the exhibits in the Kennard account, \$6000, being Count 6 of the second indictment. The jury also makes this inquiry :

'Have you any additional exhibit regarding Raymond in reference to Count 3 second indictment?'

"The jury has asked for the Kennard account, \$6000. We will send that up. With the consent of counsel, in sending up the Kennard exhibit the following memorandum is sent by the Court :

'Kennard account, you have exhibit, letter of Raymond to Couple-Gear in letter book Exhibit 221 shown on page 223, of letter dated August 2, 1910.'

"I will send the following communication to the jury with consent of counsel :

'In response to inquiry for additional exhibits, please inform me whether you desire the exhibits which relate directly to the \$12,500 charged in the indictment, Count 3 of the second indictment? If so, there are none. If you desire exhibits relating to prior payment but not charged in the indictment, please inform me, as your reference as to additional exhibits in this connection is not clear to me.'

Later, the following :

"THE COURT: In response to my inquiry, I am informed by the

Marshal that the jury desires the exhibits relating to prior payments in connection with the White Plains matter, but not charged in the indictments. And in accordance with the request, I here-with direct the Marshal to deliver to them Exhibits 187, 242, 266 and 267.

Later, the jury rendered the following verdict:

"We find the defendant Jennings guilty on all counts as charged in the indictment.

"We find the defendant Raymond guilty on all counts excepting the Killeen count No. 9 of the first indictment, and the White Plains count No. 3 of the second indictment.

"The jury strongly recommends clemency on behalf of Mr. Raymond.

"MR. BATTLE: Will your Honor set some day next week for the imposition of sentence and reserve any motions until that time?

"THE COURT: Whatever day is agreeable.

"MR. LEVY: All motions should be made in the presence of the jury.

"MR. BATTLE: Will your Honor allow me to consult with my client a moment?

"THE COURT: Yes.

"MR. BATTLE: If your Honor please, on behalf of the defendant Jennings, and after consultation with Mr. Bacon, for the defendant Raymond, we will take the regular course. We are ready for the imposition of sentence. Before sentence is imposed, I wish to make a motion on behalf of the defendant Jennings, for a stay of judgment, and ask permission to file my grounds later, motion in arrest of judgment, I mean, and for a new trial. I will ask permission to file the formal grounds later. I make the motion on the usual grounds, and all the exceptions taken during the trial, and the other legal grounds, and shall ask permission to file the grounds later.

"MR. BACON: I make the same motion on behalf of the defendant Raymond.

"THE COURT: I am ready to act.

"MR. BATTLE: In this case, I do not think there is anything I can add further to the knowledge that your Honor already has

in this case. You have sat here five long weeks, you know this trial — you know everything that has transpired. It is all fresh in your mind. You have heard the testimony as to the character of Mr. Jennings, you have heard the testimony as to his previous life. You know that he is a man of family. I can tell you as to the details of his children. He has a daughter who has just graduated, and has a son who is fifteen, and a daughter who is ten, and your Honor knows the position he has occupied in the community. This conviction is a punishment that is the greatest infliction upon him. I know nothing that can add to the punishment of conviction.

"THE COURT: The sentence of the Court is that the defendant Jennings be confined in the United States penitentiary at Atlanta, Georgia for a period of six years.

"MR. BATTLE: I make a motion for a new trial on the exceptions taken, on the ground that the verdict was against the evidence and against the weight of the evidence and upon any and all other legal grounds, and ask permission to file the formal grounds later.

"THE COURT: If it should appear that by any chance you have failed to make a motion to which you are entitled, I will see that you have the opportunity to make that motion before me, and I will consider that every motion that can properly be made is now made.

"MR. BATTLE: I ask your Honor for a stay pending decision on motions, stay pending appeal — pending decision of application which it is our present intention to make to the Circuit Court of Appeals for bail.

"MR. LEVY: The sentence is on all counts of the indictments?

"THE COURT: Yes, all counts of the indictments.

"MR. BATTLE: Your Honor will give us a stay of at least thirty days?

"THE COURT: Yes.

"Defendant Raymond called to the Bar.

"THE COURT: I think I understand this case perfectly. The great problem is to know what to do in a situation like that of Raymond. This jury has courageously done what it conceived to be its duty. The view of this jury has a strong influence upon me, for not only during this trial, but during its deliberations, it has

indicated a conscientious care which is rarely to be found. Its recommendation to me is expressed in the following words:

The jury strongly recommends clemency on behalf of Raymond.

"Under all the circumstances of the case, I suspend sentence. But I make it a provision, in appreciation of the duty that he owes the community, that he shall report once in each month for a period of five years, unless sooner relieved by the Court, and except the months of June, July and August, at the office of the United States Marshal for this District. Sentence is suspended on those conditions.

"MR. BACON: May I express my thanks, on behalf of the defendant Raymond and his family?

"THE COURT: The jury requests me to express their appreciation of the unfailing courtesy of counsel and of the Court attendants during the trial of the case, and are good enough to express their feeling towards me.

"I discharge you, gentlemen, with a final word of appreciation. I know how sad and difficult has been this task. You discharged it in accordance with your oaths and in accordance with what you deem is right. No greater reward can come to you than that. And in discharging you, I cannot express too deeply my appreciation of the high service that you have rendered."

GROUP IV

POSTAL LAWS

- No. 51. Indictment for Violation of Section 215 of the Federal Penal Code.
 - No. 52. Demurrer Interposed to Indictment.
 - No. 53. Motion in Arrest of Judgment.
 - No. 54. Indictment for Conspiracy to Violate Postal Laws.
 - No. 55. Demurrer.
 - No. 56. Demurrer of Co-defendant.
 - No. 57. Indictment for Conspiracy to Violate United States Postal Laws.
 - No. 58. Bail Bond.
 - No. 59. Arraignment.
 - No. 60. Order Consolidating Indictments for Trial.
 - No. 61. Verdict.
 - No. 62. Judgment.
 - No. 63. Commitment.
 - No. 64. Charge to Jury — Using the Mails to Defraud.
 - No. 65. Charge to Jury — Using the Mails to Defraud.
 - No. 66. Indictment — Using Mails to Defraud.

FORM NO. 51

Indictment for Violation of Section 215 of the Federal Penal Code.

Byron v. United States, 259 Fed. 371 (C. C. A. 9th Cir.).

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF OREGON

United States of America,
Plaintiff,
v.
Carlos L. Byron and Frank E.
Alley,
Defendants.

INDICTMENT — USING MAI LS TO DEFRAUD [FORM 51

United States of America, } ss.
District of Oregon. }

The Grand Jurors of the United States of America for the District of Oregon, duly impaneled, sworn and charged to inquire in, of, and concerning the commission of crime within said district, upon their oaths and affirmations do find, charge, allege and present:

COUNT ONE

That the said Carlos L. Byron and Frank E. Alley, the defendants above named, having devised and intending to devise a scheme and artifice to defraud Nellie A. Barker, Walter E. Bates, Carrie M. Brown, Charles Brown, Richard Emerson, Charles W. Farr, Rosella A. George, James A. Haydon, Phillip Hingston, Elizabeth Parker, Claire Phipps, Johanna C. Shane, Nettie Thomasson, William R. Heales, Gladys Fisher, George P. Funkhouser, and Mrs. Nora B. Mitchell (said last named seventeen persons being hereinafter in this indictment designated as "VICTIMS"), and various and divers other persons to the Grand Jurors unknown, and the public generally, which said scheme and artifice to defraud is hereinafter in this count of this indictment set forth, described and detailed, did thereafter, on or about the 14th day of October, 1916, at Eugene, Oregon, and within the jurisdiction of this court, and for the purpose of executing said scheme and artifice to defraud, and attempting so to do, willfully, knowingly and feloniously, place and cause to be placed in a postoffice of the United States of America, to wit: in the United States postoffice at Eugene, Oregon, for mailing and delivery, and with the intent and purpose then and there in the said defendants, Carlos L. Byron and Frank E. Alley, that the same should be sent, transmitted and delivered by the postoffice establishment of the United States, a certain sealed envelope, with postage prepaid thereon, and then and there addressed to United States Land Office, Roseburg, Oregon, said envelope having then and there enclosed therein a printed letter, in substantially the following words and figures, to wit:

W. B. Dillard

Phone 1046
Law Offices
Hewitt & Dillard
Eugene, Oregon

Iranæus Hewitt

October 14, 1916.

United States Land Office,
Roseburg, Oregon.

Gentlemen: —

Herewith find Stone and Timber applications of Gladys Fisher, Nettie Thomasson, Carrie M. Brown, and George P. Funkhouser, together with four P. O. Money Orders of \$10 each filing fees therefore.

These applicants were duly notified with reference to the holding of your office relative to making entry here upon lands located where these are located and yet stated that they desired to make their entries at this place.

Very respectfully,
I. P. HEWITT,
U. S. Commissioner.

There being then and there also enclosed with said letter and in said envelope, a certain postoffice money order No. 254701, issued at Eugene, Oregon, in the sum of \$10.00; the application and sworn statement, in duplicate, of Gladys Fisher, to purchase from the United States of America the Southwest quarter (SW $\frac{1}{4}$) of Section Twenty-four (24) in Township Thirty-one (31) south, Range Eleven (11) west of the Willamette Meridian, in Oregon; the affidavit of the said Gladys Fisher, of date October 14, 1916, made before I. P. Hewitt, United States Commissioner; postoffice money order No. 254700, issued at Eugene, Oregon, in the sum of \$10.00; the application and sworn statement, in duplicate, of Nettie Thomasson, to purchase from the United States the Southeast quarter (SE $\frac{1}{4}$) of Section Twenty-four (24) in Township Thirty-one (31) south, Range Eleven (11) west of the Willamette Meridian; the affidavit of the said Nettie Thomasson, of date October 14, 1916, made before I. P. Hewitt, United States Commissioner; the letter of the said Nettie Thomasson, addressed to

the Register and Receiver at Roseburg, Oregon, in which she designated Frank E. Alley as her attorney to represent her in connection with the said application to purchase the lands described therein under the Act of Congress approved June 3, 1878; postoffice money order No. 254699, issued at Eugene, Oregon, in the sum of \$10.00; the application and sworn statement, in duplicate, of Carrie M. Brown, to purchase from the United States of America the Northwest quarter (NW $\frac{1}{4}$) of Section Twenty-four (24) in Township Thirty-one (31) south, Range Eleven (11) west of the Willamette Meridian; the affidavit of the said Carrie M. Brown, of date October 14, 1916, made before I. P. Hewitt, United States Commissioner; the letter of the said Carrie M. Brown, addressed to the Register and Receiver at Roseburg, Oregon, in which she designated Frank E. Alley as her attorney to represent her in connection with the said application to purchase the lands described therein under the Act of Congress approved June 3, 1878; postoffice money order No. 254698, issued at Eugene, Oregon, in the sum of \$10.00; the application and sworn statement, in duplicate, of George P. Funkhouser, to purchase from the United States the Northeast quarter (NE $\frac{1}{4}$) of Section Twenty-four (24) in Township Thirty-one (31) south, Range Eleven (11) west of the Willamette Meridian; the affidavit of the said George P. Funkhouser, of date October 14, 1916, made before I. P. Hewitt, United States Commissioner; the letter of the said George P. Funkhouser, addressed to the Register and Receiver at Roseburg, Oregon, in which he designated Frank E. Alley, as his attorney to represent him in connection with the said application to purchase the lands described therein under the Act of Congress approved June 3, 1878.

The said scheme and artifice to defraud being then and there in and by the following means, methods, plans and modes of the said defendant, Carlos L. Byron and Frank E. Alley, that is to say: That the said defendants, Carlos L. Byron and Frank E. Alley, for the purpose of swindling, cheating and defrauding the said "VICTIMS" and various and divers other persons to the Grand Jurors unknown, and the public generally, out of their money and property, and to defraud them thereof, would fraudulently and dishonestly represent, pretend and promise to the

said "VICTIMS", and to various and divers other persons to the Grand Jurors unknown, and to the public generally that they, the said defendants, Carlos L. Byron and Frank E. Alley, could and would procure for the said "VICTIMS", and for divers other persons to the Grand Jurors unknown, and for all other persons who should, through the agency of the said defendants, Carlos L. Byron and Frank E. Alley, apply for the purchase of the same, patents and title to certain tracts of land (hereinafter designated as the selected lands and patented lands), located within the state of Oregon, and in areas of 160 acres for each applicant, if said persons would pay to the said defendants, Carlos L. Byron and Frank E. Alley, certain sums of money as location fees and alleged expenses; that the said defendants, Carlos L. Byron and Frank E. Alley, were then, and had for a long time prior thereto, been successfully engaged in procuring for many applicants title to the said hereinafter designated "selected lands and patented lands by means of the procedure hereinafter set forth; that those lands of the United States hereinafter designated" as the selected lands and located within the boundaries of the Roseburg, Oregon, land district, and having great value for the timber thereon, had theretofore been selected by F. A. Hyde & Co. and Frederick A. Kribs, and their transferees under and by virtue of the exchange provisions of the Act of Congress approved June 4, 1897, which Act is commonly known as the Forest Lieu Selection Act; that the manner and method by which the title to the base lands offered by said selectors in exchange for said selected lands had been acquired were fraudulent and unlawful, and that by reason thereof and based thereon, proceedings were then and there pending before the United States Department of the Interior, in which said proceedings the United States of America was then and there seeking and attempting to cancel the said selections and each, every, and all thereof; that the said adverse proceedings so instituted against the said selected lands would result in the cancellation of all of said selections; that large tracts of other lands located and situated within the boundaries of said Roseburg, Oregon, land district, and hereinafter designated as the patented lands, were lands to which patents of the United States of America had theretofore been fraudulently obtained and that said lands had been

theretofore restored to the public domain by the action of the Supreme Court of the United States in certain suits in equity, pending in said courts, in which said suits the United States of America was plaintiff and the Linn & Lane Timber Company and others were defendants; that the said selected lands and the said patented lands hereinbefore referred to in this indictment, were then and there subject to filing and open to entry and sale under and by virtue of the Act of Congress approved June 3, 1878, and commonly known and called the Timber and Stone Act; that each and every person who should, through the agency of these defendants make an application to the United States of America for the purchase of said lands in tracts of 160 acres each, who should follow the procedure hereinafter designated as the procedure of the said defendants, and who should pay to the United States of America the required filing fees, and the further sum of \$2.50 per acre for said lands to the United States of America, would surely and certainly receive title to said lands in said tracts of 160 acres each, within, to wit: two years from the date that the said applicants, and each, every, and all thereof, should apply to the said United States for the purchase thereof; that the proper and legal method of making and filing applications to purchase said lands, as aforesaid, and to secure title thereto from the United States, was that the said applicants and each, every, and all thereof, should through the agency of the said defendants, Carlos L. Byron and Frank E. Alley, file and cause to be filed in the United States Land Office at Roseburg, Oregon, a duly verified application under the provisions of the said Timber and Stone Act for the purchase of 160 acres of either the said selected lands or the said patented lands, under the guidance and direction of the said defendants, Carlos L. Byron and Frank E. Alley, and that by virtue and reason of such filing and on account thereof, and the alleged valuable services which it was then and there represented would be rendered by the said defendants, Carlos L. Byron and Frank E. Alley, the said "VICTIMS", and divers other persons to the Grand Jurors unknown, as applicants, and each, every, and all thereof, would procure, obtain and establish for themselves a preferential vested right over every other person to purchase said lands and the timber thereon

from the United States of America for the purchase price of \$2.50 per acre; that the said filing was a part of the necessary and proper procedure of securing a patent to said lands, and by virtue thereof and the pretended services to be rendered by the said defendants, Carlos L. Byron and Frank E. Alley, the said "VICTIMS", and divers other persons to the Grand Jurors unknown, as such applicants, would initiate and secure a prior preference and vested right to purchase the said lands and the timber thereon from the United States for a price not to exceed the sum of \$2.50 per acre; that the purchase price required and exacted to be paid to the United States for said lands and the timber thereon under the provisions of the Timber and Stone Act was the sum of \$2.50 per acre and no more; that in order to secure title to said lands it was not necessary for any of said "VICTIMS", or any other person as such applicant, to make any actual or personal examination of any of said lands prior to making said application to purchase said lands under and by virtue of said Timber and Stone Act, but on the contrary, examination of said land could be made by an agent of the applicant and at a time subsequent to the filing and presentation of the application for the purchase thereof to the United States Land Office; that each, every, and all of the said applications to purchase said lands under the said Timber & Stone Act which should be made under the direction, guidance and through the agency of the defendants, Carlos L. Byron and Frank E. Alley, and by reason of the pretended alleged services to be furnished by the said defendants, Carlos L. Byron and Frank E. Alley, would be accepted and allowed by the officials of the United States Land Office, and that thereafter the United States of America would within the period of two years from the date of said respective applications and upon the payment of \$2.50 per acre by the said "VICTIMS", as such applicants, issue a patent to each, every, and all of said "VICTIMS"; and to divers other persons to the Grand Jurors unknown, who should, through the agency of the said defendants, Carlos L. Byron and Frank E. Alley, make application as aforesaid; that each, every, and all of the said applications which would be by and through the agency and under the direction and guidance of the said defendants, Carlos L. Byron and Frank

E. Alley, so filed for the purchase of said 160 acre tracts of said selected lands or said patented lands, would be the first valid applications in point of time filed in the United States Land Office for the said respective tracts of land so applied for.

It was a further part and portion of said scheme and artifice to defraud the said "VICTIMS" and various and divers other persons to the Grand Jurors unknown, and the public generally, that the said defendants, Carlos L. Byron and Frank E. Alley, would and did require the said "VICTIMS" and each, every, and all thereof, and divers other persons to the Grand Jurors unknown, to pay to the said defendants, Carlos L. Byron and Frank E. Alley, sums of money ranging in amounts from \$100.00 to \$1000.00 each, for the pretended services to be rendered by the said defendants, Carlos L. Byron and Frank E. Alley, to the said "VICTIMS", and to divers other persons to the Grand Jurors unknown in furnishing alleged information of the location and the description of said respective 160 acre tracts of land, and pretending to do all things necessary to be done for the said "VICTIMS" and for various and divers other persons to the Grand Jurors unknown, to procure for the said "VICTIMS", and for divers other persons to the Grand Jurors unknown, a prior preference and vested right to purchase said respective tracts of land from the United States for the alleged price of \$2.50 per acre, and that when said money had been so received from the said "VICTIMS", and from various and divers other persons to the Grand Jurors unknown, that the said defendants, Carlos L. Byron and Frank E. Alley, would cheat, swindle, wrong, and defraud the said "VICTIMS" and various and divers other persons to the Grand Jurors unknown, out of all said sums of money which any of said "VICTIMS" or any other persons, should pay to the said defendants, Carlos L. Byron and Frank E. Alley, and would give to the said "VICTIMS", and to divers other persons to the Grand Jurors unknown, and to every person who under said pretenses and on account thereof should pay said sums of money, nothing whatsoever of value in exchange or payment therefor:

That the said defendants, Carlos L. Byron and Frank E. Alley, in order to induce the said "VICTIMS", and various and

divers other persons to the Grand Jurors unknown, to pay said sums of money to the said defendants, Carlos L. Byron and Frank E. Alley, would further fraudulently and as a further inducement to cause said "VICTIMS" and various and divers other persons to the Grand Jurors unknown, to part with said money, agree verbally and in writing with said "VICTIMS", and with divers other persons to the Grand Jurors unknown, that they, the said defendants, Carlos L. Byron and Frank E. Alley, would furnish such further and additional services as might be necessary to procure from the United States a patent to the lands applied for and that in the event such patent should not be so procured that they, the said defendants, Carlos L. Byron and Frank E. Alley, would return and refund all of said sums of money to the said "VICTIMS" and to divers and various other persons to the Grand Jurors unknown, in the event the said "VICTIMS" and divers other persons to the Grand Jurors unknown, should be unable, through no fault of the said "VICTIMS" as applicants, to secure from the United States of America patents for said respective tracts of land so applied for.

It was a further part and portion of said scheme and artifice to defraud that the said defendants, Carlos L. Byron and Frank E. Alley, would further fraudulently represent, pretend and promise the said "VICTIMS" and various and divers other persons to the Grand Jurors unknown, that they, the said defendants, Carlos L. Byron and Frank E. Alley, could and would, by reason of their great alleged skill and knowledge of public land laws, cause a reversal and change of certain rules, regulations and decisions of the United States General Land Office and of the Department of the Interior, and in that manner secure for the said "VICTIMS" and for divers other persons to the Grand Jurors unknown title to said lands from the United States of America for the payment of said \$2.50 per acre.

It was a further part and portion of said scheme and artifice to defraud the said "VICTIMS", and various and divers other persons to the Grand Jurors unknown, that the said defendants, Carlos L. Byron and Frank E. Alley, for the purpose of allaying and dispelling the suspicions of the said "VICTIMS" and various and divers other persons to the Grand Jurors unknown, that the

said defendants, Carlos L. Byron and Frank E. Alley, would pretend to agree with the said "VICTIMS", and with various and divers other persons to the Grand Jurors unknown, that a part and portion of the fees due to the said defendants, Carlos L. Byron and Frank E. Alley, from the said "VICTIMS" should be paid in the future and after title to said lands had been secured from the Government of the United States by the said "VICTIMS."

It was a further part and portion of said scheme and artifice to defraud that the mails of the United States should be by the said defendants, Carlos L. Byron and Frank E. Alley, used and caused to be used in the carrying out of the scheme and the said artifice to defraud, in this, that printed and written letters of and concerning the said applications, the said applications themselves, pretended notices of appeal, and other written documents relative to and pertaining to the said procedure of the said defendants, Carlos L. Byron and Frank E. Alley, should be by the said defendants placed and caused to be placed in the United States postoffices situated within the state of Oregon for mailing and delivery.

That by and through and on account of said scheme and artifice to defraud, the said defendants, Carlos L. Byron and Frank E. Alley, intended to cheat, swindle, wrong and defraud each of said "VICTIMS", and divers other persons to the Grand Jurors unknown, out of all of the money which any of said persons should pay to the said defendants, Carlos L. Byron and Frank E. Alley, on account of filing fees, location fees and for said alleged services; that for the purpose of further carrying out said scheme and artifice to defraud, the said defendants, Carlos L. Byron and Frank E. Alley, would and did falsely represent to and promise said "VICTIMS", and to divers other persons to the Grand Jurors unknown, and to the public generally, that great numbers of other persons to these Grand Jurors unknown, were anxious and desirous of making similar applications through the agency of the said defendants, Carlos L. Byron and Frank E. Alley, for the purchase of said lands from the United States of America; that for the purpose of inducing the said "VICTIMS" and various and divers other persons to the Grand Jurors unknown, and the

public generally, to pay to said defendants, Carlos L. Byron and Frank E. Alley, said sums of money, the said defendants would and did further fraudulently and falsely represent to the said "VICTIMS" and to various and divers other persons to the Grand Jurors unknown, that on account of the great alleged skill and ability of the said defendants, Carlos L. Byron and Frank E. Alley, and their great knowledge of land matters and land litigation and land procedure, that the said defendants had by reason of their said procedure obtained for many applicants, for the purchase of said lands, title thereto upon the payment of said sum of \$2.50 per acre to the United States of America.

Whereas, in truth and in fact, and as the defendants, Carlos L. Byron and Frank E. Alley, at and during all of the times and dates mentioned, specified and stated in this indictment, then and there well knew :

a. Neither of the defendants, Carlos L. Byron or Frank E. Alley, had ever at any time succeeded, either by reason of their experience or skill in public land matters, or at all, in procuring for any person whomsoever, any patent from the United States for any of said lands by means of the procedure of the defendants, Carlos L. Byron and Frank E. Alley, hereinbefore set forth.

b. It was then and there false and untrue that either of said defendants had at any time, or at all, ever been successfully engaged in procuring for any applicants the title to the public lands of the United States by means of the procedure of the defendants, Carlos L. Byron and Frank E. Alley, hereinbefore set forth.

c. The procedure of the said defendants, Carlos L. Byron and Frank E. Alley, as hereinbefore set forth in detail, was a worthless procedure and by the same it was impossible for any of said applicants to either initiate to secure any preference or vested right, or any right at all, to purchase any of said lands from the United States of America.

d. Each, every, and all of said "VICTIMS" who should pay to the said defendants, Carlos L. Byron and Frank E. Alley, any sums of money whatsoever for the said pretended services of the defendants, as hereinbefore set forth, would be, by the said defendants, cheated, swindled and defrauded out of all of the sums

of money which they should pay to the said defendant, or either thereof.

e. Each, and every, representation, pretense and promise made and to be made to the said "VICTIMS" and to various and divers other persons to the Grand Jurors unknown, that the method and manner of attempting to secure title and patent to any of said lands from the United States of America, as hereinbefore described, was a legal or proper procedure, was then and there false, untrue, and the services rendered, and to be rendered, by the said defendants, Carlos L. Byron and Frank E. Alley, in carrying out said procedure, were worthless, useless, sham, and of no account whatsoever.

f. None of the said lands described in said written applications made and to be made through the agency of the said defendants, Carlos L. Byron and Frank E. Alley, for the purchase thereof, were lands open either to sale, selection or entry under any of the public land laws of the United States at the time of the making of any of said applications, and each, every, and all of the said applications would be by the officers of the Department of the Interior and of the General Land Office, and of the United States Land Office at Roseburg, Oregon, and by the Government, rejected and held for naught.

g. The representation and pretense that any of said lands could be purchased from the United States of America under any circumstances or conditions for the purchase price of \$2.50 per acre, were false, fraudulent, and untrue in this; that even had said lands been open for entry under the Timber and Stone Act, the same could have been procured from the Government only by the payment of the appraised value thereof, which sum in each and every instance would be many times greater than the sum of \$2.50 per acre.

h. The representations made and to be made by the said defendants, Carlos L. Byron and Frank E. Alley, to the said "VICTIMS" and to various and divers other persons to the Grand Jurors unknown, that a personal examination of said lands in order to secure title thereto under and by virtue of the said Timber and Stone Act was unnecessary, were false, fraudulent and untrue in this; that in each and every instance and case, even if

public generally, to pay to said defendants, Carlos L. Byron and Frank E. Alley, said sums of money, the said defendants would and did further fraudulently and falsely represent to the said "VICTIMS" and to various and divers other persons to the Grand Jurors unknown, that on account of the great alleged skill and ability of the said defendants, Carlos L. Byron and Frank E. Alley, and their great knowledge of land matters and land litigation and land procedure, that the said defendants had by reason of their said procedure obtained for many applicants, for the purchase of said lands, title thereto upon the payment of said sum of \$2.50 per acre to the United States of America.

Whereas, in truth and in fact, and as the defendants, Carlos L. Byron and Frank E. Alley, at and during all of the times and dates mentioned, specified and stated in this indictment, then and there well knew :

a. Neither of the defendants, Carlos L. Byron or Frank E. Alley, had ever at any time succeeded, either by reason of their experience or skill in public land matters, or at all, in procuring for any person whomsoever, any patent from the United States for any of said lands by means of the procedure of the defendants, Carlos L. Byron and Frank E. Alley, hereinbefore set forth.

b. It was then and there false and untrue that either of said defendants had at any time, or at all, ever been successfully engaged in procuring for any applicants the title to the public lands of the United States by means of the procedure of the defendants, Carlos L. Byron and Frank E. Alley, hereinbefore set forth.

c. The procedure of the said defendants, Carlos L. Byron and Frank E. Alley, as hereinbefore set forth in detail, was a worthless procedure and by the same it was impossible for any of said applicants to either initiate to secure any preference or vested right, or any right at all, to purchase any of said lands from the United States of America.

d. Each, every, and all of said "VICTIMS" who should pay to the said defendants, Carlos L. Byron and Frank E. Alley, any sums of money whatsoever for the said pretended services of the defendants, as hereinbefore set forth, would be, by the said defendants, cheated, swindled and defrauded out of all of the sums

of money which they should pay to the said defendant, or either thereof.

e. Each, and every, representation, pretense and promise made and to be made to the said "VICTIMS" and to various and divers other persons to the Grand Jurors unknown, that the method and manner of attempting to secure title and patent to any of said lands from the United States of America, as hereinbefore described, was a legal or proper procedure, was then and there false, untrue, and the services rendered, and to be rendered, by the said defendants, Carlos L. Byron and Frank E. Alley, in carrying out said procedure, were worthless, useless, sham, and of no account whatsoever.

f. None of the said lands described in said written applications made and to be made through the agency of the said defendants, Carlos L. Byron and Frank E. Alley, for the purchase thereof, were lands open either to sale, selection or entry under any of the public land laws of the United States at the time of the making of any of said applications, and each, every, and all of the said applications would be by the officers of the Department of the Interior and of the General Land Office, and of the United States Land Office at Roseburg, Oregon, and by the Government, rejected and held for naught.

g. The representation and pretense that any of said lands could be purchased from the United States of America under any circumstances or conditions for the purchase price of \$2.50 per acre, were false, fraudulent, and untrue in this; that even had said lands been open for entry under the Timber and Stone Act, the same could have been procured from the Government only by the payment of the appraised value thereof, which sum in each and every instance would be many times greater than the sum of \$2.50 per acre.

h. The representations made and to be made by the said defendants, Carlos L. Byron and Frank E. Alley, to the said "VICTIMS" and to various and divers other persons to the Grand Jurors unknown, that a personal examination of said lands in order to secure title thereto under and by virtue of the said Timber and Stone Act was unnecessary, were false, fraudulent and untrue in this; that in each and every instance and case, even if

said lands had been subject and open to entry, it was required by rule and regulation, duly promulgated by the officers of the General Land Office, that a personal examination of the said lands must be made by the applicant within thirty days prior to the date of his application.

i. Each and every application so filed and pretended to be filed for the purchase of any of said selected or patented lands under the said Timber and Stone Act would be, and were, uniformly rejected, disallowed and denied by the United States Land Office and the Department of the Interior, and the representations and pretenses made and to be made by the said defendants, Carlos L. Byron and Frank E. Alley, that the said officers of the Government would accept from said "VICTIMS" or from any other person, the sum of \$2.50 per acre as the purchase price of said lands, were false, fraudulent and untrue.

Upon the said various and respective tracts of land upon which and covering which the said defendants, Carlos L. Byron and Frank E. Alley, would procure the said "VICTIMS" as applicants to file said applications, there had already been filed by divers other persons to the Grand Jurors unknown, similar applications to purchase said respective tracts of land, which said similar applications to purchase said tracts of land were prior to the filing of the applications through the said agency of the said defendants, Carlos L. Byron and Frank E. Alley.

k. The making and the filing of the said applications to purchase said lands under the Timber and Stone Act and the services to be rendered by the said defendants, Carlos L. Byron and Frank E. Alley, was not only a useless procedure but the services pretended to be rendered by the said defendants were sham, frivolous and worthless, and it was then and there and at all times impossible by means of any such procedure for the said "VICTIMS", or any of them to secure any preference, vested or any other right to purchase any of the said lands from the United States of America, either by the payment of the sum of \$2.50 per acre, or otherwise, or at all; neither of the said defendants ever intended at any time to ever return or repay any of the sums of money paid by said "VICTIMS" to the said defendants, Carlos L. Byron and Frank E. Alley, for said pretended services in the

event the said "VICTIMS" or any other person, should fail for reason whatsoever to secure patent or title from the United States for any of said lands, but, on the contrary, said agreements and each, every and all thereof for the return of said sums of money were made by the said defendants for the purpose and with the intent of making the said "VICTIMS", and various and divers other persons to the Grand Jurors unknown, believe that said money would be returned, and for the further purpose of preventing said "VICTIMS", and various and divers other persons to the Grand Jurors unknown, from discovering the fact that they had been cheated, swindled and defrauded out of all sums of money which they had paid to the said defendants, Carlos L. Byron and Frank E. Alley;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, upon their oaths and affirmation aforesaid, do further find, charge, allege and present:

COUNT Two

That the above named defendants, Carlos L. Byron and Frank E. Alley, having devised a scheme and artifice to defraud the said Nellie A. Barker, Walter E. Bates, Carrie M. Brown, Charles Brown, Richard Emerson, Charles W. Farr, Rosella A. George, James A. Haydon, Phillip Hingston, Elizabeth Parker, Claire Phipps, Johanna C. Shane, Nettie Thomasson, William R. Heales, Gladys Fisher, George P. Funkhouser, and Mrs. Nora B. Mitchell, and various and divers other persons to the Grand Jurors unknown, and the public generally, which said scheme and artifice to defraud is fully set out, described and detailed in Count One of this indictment, reference to the said Count One and to each allegation contained therein being hereby expressly made and referred to for a complete description of said scheme and artifice to defraud, did thereafter, and on or about the 28th day of October, 1916, at Eugene, Oregon, and within the jurisdiction of this court, and for the purpose of executing said scheme and artifice to defraud and attempting so to do, willfully, knowingly and feloniously place and cause to be placed in a postoffice of the United States,

to wit: in the United States postoffice at Eugene, Oregon, for mailing and delivery, and for the purpose that the same should be sent, transmitted and delivered by and through the postoffice establishment of the United States, a certain sealed envelope, with postage then and there prepaid thereon, being then and there addressed to United States Land Office at Roseburg, Oregon, the said envelope at the time of said mailing then and there containing and enclosing, as they, the said defendants, and each thereof, then and there well knew, a certain letter, of which the following is copy, to wit:

W. B. Dillard

Law Offices
Hewitt & Dillard
Eugene, Oregon

Irenæus Hewitt

October 28, 1916

U. S. Land Office,
Roseburg, Oregon.

Gentlemen:—

Herewith I enclose applications for Stone & Timber from Charles W. Farr and Mrs. Nora B. Mitchell together with P. O. Money Orders \$10 each filing fees therefor.

Applicants were duly advised as to the ruling of your office on all the irregularities of these applications at the time of making same.

Very respectfully,
I. P. HEWITT,
U. S. Commissioner.

And as they, the said defendants, then and there well knew, there being also enclosed in said envelope and with said letter, a certain postoffice money order No. 255617, issued at Eugene, Oregon, in the sum of \$10.00; also the application and sworn statement, in duplicate, of Charles W. Farr, to purchase from the United States of America and under the Timber and Stone Act, the Southwest quarter (SW $\frac{1}{4}$) of Section Twenty-two (22) in Township Thirty-one (31) south, Range Ten (10) west of the Willamette Meridian; also a letter signed by the said Charles W. Farr and directed to the Register and Receiver of the Roseburg

Land Office at Roseburg, Oregon, appointing the defendant Frank E. Alley as the attorney to represent the said Charles W. Farr in connection with said application to purchase the lands described therein under the said Act of Congress approved June 3, 1878; also an affidavit signed by the said Charles W. Farr and subscribed and sworn to before I. P. Hewitt, a United States Commissioner at Eugene, in Lane County, Oregon, on October 28, 1916; also a certain postoffice money order No. 255616, issued at Eugene, Oregon, in the sum of \$10.00; also the application and sworn statement, in duplicate, of the said Mrs. Nora B. Mitchell, to purchase from the United States of America under the said Act of Congress approved June 3, 1878, the Northeast quarter (NE $\frac{1}{4}$) of Section Twenty-two (22) in the Township Thirty-one (31) south, Range Ten (10) west of the Willamette Meridian; also a letter signed by the said Mrs. Nora B. Mitchell, and directed to the Register and Receiver, Roseburg, Oregon, appointing Frank E. Alley as her attorney to represent her in connection with the said attached and enclosed application to purchase said lands under the said Act of Congress approved June 3, 1878; also the affidavit of the said Mrs. Nora B. Mitchell, made before I. P. Hewitt, a United States Commissioner at Eugene, Oregon, on October 28, 1916; said letter above set forth, and each, every, and all of said enclosure being of and concerning the said scheme and artifice to defraud full set out, described and detailed in Count One of this indictment;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege and present:

COUNT THREE

That the above-named defendants, Carlos L. Byron and Frank E. Alley, having devised a scheme and artifice to defraud the said Nellie A. Barker, Walter E. Bates, Carrie M. Brown, Charles Brown, Richard Emerson, Charles W. Farr, Rosella A. George, James A. Haydon, Phillips Hingston, Elizabeth Parker, Claire Phipps, Johanna C. Shane, Nettie Thomasson, William R. Heales,

Gladys Fisher, George P. Funkhouser, and Mrs. Nora B. Mitchell, and various and divers other persons to the Grand Jurors unknown, and the public generally, which said scheme and artifice to defraud is fully set out, described and detailed in Count One of this indictment, reference to the said Count One and to each allegation contained therein being hereby expressly made and referred to for a complete description of said scheme and artifice to defraud, did thereafter, and on or about the 15th day of March, 1917, at Eugene, Oregon, and within the jurisdiction of this court, and for the purpose of executing said scheme and artifice to defraud and attempting so to do, willfully, knowingly and feloniously place, and cause to be placed, in a postoffice of the United States, to wit: in the United States postoffice at Eugene, Oregon, for mailing and delivery, and for the purpose that the same should be sent, transmitted and delivered by and through the postoffice establishment of the United States, a certain sealed envelope with postage then and there prepaid thereon, being then and there addressed to the United States Land Office at Roseburg, Oregon, the said envelope at the time of said mailing then and there containing and enclosing, as they, the said defendants, and each thereof, then and there knew, a certain letter, of which the following is a copy, to wit:

W. B. Dillard

Irenæus Hewitt

Law Offices
Hewitt & Dillard
Eugene, Oregon

March 15, 1917

United States Land Office,
Roseburg, Oregon.

Gentlemen: —

Herewith I enclose applications for timber in duplicate with affidavit and appointment of attorney of Rosella A. George and Charles Brown, respectively.

Also P. O. Money Orders in the sum of \$10.00 each for same.

Very respectfully,
I. P. HEWITT,
U. S. Commissioner.

And as they, the said defendants, then and there well knew, there being also enclosed in said envelope and with said letter, a

certain postoffice money order No. 264382, issued at Eugene, Oregon, in the sum of \$10.00; the application and sworn statement, in duplicate, of Charles Brown to purchase from the United States of America, under the Timber and Stone Act approved June 3, 1878, the Southwest quarter (SW $\frac{1}{4}$) of Section Twenty-four (24) in Township Thirty-one (31) south, Range Ten (10) west of the Willamette Meridian; also the affidavit of said Charles Brown, of date March 15, 1917, made before I. P. Hewitt, United States Commissioner; the letter of said Charles Brown addressed to the Register and Receiver at Roseburg, Oregon, in which he designated Frank E. Alley as his attorney to represent him in connection with the said application to purchase the lands described therein under the Act of Congress approved June 3, 1878; also postoffice money order No. 264383 issued at Eugene, Oregon, in the sum of \$10.00; the application and sworn statement, in duplicate, of Rosella A. George, to purchase from the United States of America under the Timber and Stone Act approved June 3, 1878, the Southeast quarter (SE $\frac{1}{4}$) of Section Twenty-four (24) in Township Thirty-one (31) south, Range Ten (10) west of the Willamette Meridian; also the affidavit of said Rosella A. George, of date March 15, 1917, made before I. P. Hewitt, United States Commissioner; the letter of said Rosella A. George, addressed to the Register and Receiver at Roseburg, Oregon, in which she designated Frank E. Alley as her attorney to represent her in connection with the said application to purchase the lands described therein under the Act of Congress approved June 3, 1878; said letter, and each, every, and all of said enclosures being of and concerning the said scheme and artifice to defraud fully set out, described and detailed in Count One of this indictment;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege and present:

COUNT FOUR

That the above named defendants, Carlos L. Byron and Frank E. Alley, having devised a scheme and artifice to defraud the said

Nellie A. Barker, Walter E. Bates, Carrie M. Brown, Charles Brown, Richard Emerson, Charles W. Farr, Rosella A. George, James A. Haydon, Phillip Hingston, Elizabeth Parker, Claire Phipps, Johanna C. Shane, Nettie Thomasson, William R. Heales, Gladys Fisher, George P. Funkhouser and Mrs. Nora B. Mitchell, and various and divers other persons to the Grand Jurors unknown, and the public generally, which said scheme and artifice to defraud is fully set out, described and detailed in Count One of this indictment, reference to the said Count One and to each allegation contained therein being hereby expressly made and referred to for a complete description of said scheme and artifice to defraud, did thereafter, and on the 3rd day of March, 1917, at Albany, Oregon, and within the jurisdiction of this court, and for the purpose of executing said scheme and artifice to defraud and attempting so to do, willfully, knowingly and feloniously place, and cause to be placed, in a postoffice of the United States, to wit: in the United States postoffice at Albany, Oregon, for mailing and delivery, and for the purpose that the same should be sent, transmitted and delivered by and through the postoffice establishment of the United States, a certain sealed envelope with postage then and there prepaid thereon, being then and there addressed to the Receiver of the United States Land Office at Roseburg, Oregon, the said envelope at the time of said mailing, then and there containing and enclosing, as they, the said defendants, and each thereof, then and there well knew, a certain letter, of which the following is a copy, to wit:

Office of
County Clerk of Linn County
Rufus M. Russell, Clerk
Albany, Oregon, March 3, 1917

Mr. R. R. Turner,
Receiver, U. S. Land Office,
Roseburg, Oregon.

Dear Sir:—

Herewith enclosed find application for timber claim of Claire Phipps for the NW $\frac{1}{4}$ of Sec. 34, Tp. 14 S. R. 3 E. Will. Mer.

Tusting you will find the application executed in due form, I
remain

Very truly yours,
R. M. RUSSELL,
Clerk

And as they, the said defendants, then and there well knew, there being also enclosed in said envelope and with said letter a certain postoffice money order No. 194491 issued at Albany, Oregon, in the sum of \$10.00; also the application and sworn statement in duplicate of said Claire Phipps to purchase from the United States of America, under the Timber and Stone Act approved June 3, 1878, the Northwest quarter (NW $\frac{1}{4}$) of Section Thirty-four (34), Township Fourteen (14) south, Range Three (3) each of the Willamette Meridian; also the letter of said Claire Phipps addressed to the Register and Receiver at Roseburg, Oregon, in which she designated Frank E. Alley as her attorney to represent her in connection with the said application to purchase the lands described therein under the Act of Congress approved June 3, 1878; said letter, and each, every, and all of said enclosures being of and concerning the said scheme and artifice to defraud fully set out, described and detailed in Count One of this indictment;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege and present:

COUNT FIVE

That the above named defendants, Carlos L. Byron and Frank E. Alley, having devised a scheme and artifice to defraud the said Nellie A. Barker, Walter E. Bates, Carrie M. Brown, Charles Brown, Richard Emerson, Charles W. Farr, Rosella A. George, James A. Haydon, Phillip Hingston, Elizabeth Parker, Claire Phipps, Johanna C. Shane, Nettie Thomasson, William R. Heales, Gladys Fisher, George P. Funkhouser, and Mrs. Nora B. Mitchell, and various and divers other persons to the Grand Jurors unknown

and the public generally, which said scheme and artifice to defraud is fully set out, described and detailed in Count One of this indictment, reference to the said Count One and to each allegation contained therein being hereby expressly made and referred to for a complete description of said scheme and artifice to defraud, did thereafter and on the 15th day of March, 1917, at Albany, Oregon, and within the jurisdiction of this court, and for the purpose of executing said scheme and artifice to defraud and attempting so to do, willfully, knowingly and feloniously place and cause to be placed in a postoffice of the United States, to wit: in the United States postoffice at Albany, Oregon, for mailing and delivery, and for the purpose that the same should be sent, transmitted and delivered by and through the postoffice establishment of the United States a certain sealed envelope with postage then and there prepaid thereon, being then and there addressed to the Register and Receiver of the United States Land Office at Roseburg, Oregon, the said envelope at the time of said mailing then and there containing and enclosing, as they, the said defendants, and each thereof, then and there well knew, a certain letter, of which the following is a copy, to wit:

Office of
County Clerk of Linn County
Rufus M. Russell, Clerk

Albany, Oregon, March 15, 1917

Register and Receiver, U. S. Land Office,

Roseburg, Oregon.

Gentlemen: —

Enclosed find Timber application of Johanna C. Shane for the N $\frac{1}{2}$ N $\frac{1}{2}$ Sec. 14 Tp. 14 S. R. 3 E. Will. Merd. containing 160 acres. Also find enclosed Money Order in favor of R. R. Turner in the sum of \$10.00 to cover filing fee on same.

Trusting you will find the blanks executed in due form, I remain

Very truly yours,

R. M. RUSSELL,

Clerk.

And as they, the said defendants, then and there well knew, there being also enclosed in said envelope and with said letter, a certain postoffice money order No. 194942 issued at Albany,

Oregon, in the sum of \$10.00; also the application and sworn statement in duplicate of Johanna C. Shane to purchase from the United States of America under the Timber and Stone Act of Congress approved June 3, 1878, the North half of the North half ($N\frac{1}{2}$ $N\frac{1}{2}$) of Section Fourteen (14) in Township Fourteen (14) south, Range Three (3) east of the Willamette Meridian; also letter of said Johanna C. Shane addressed to the Register and Receiver at Roseburg, Oregon, in which she designated Frank E. Alley as her attorney to represent her in connection with the said application to purchase the lands described therein under the Act of Congress approved June 3, 1878; also a document signed by one William R. Heales dated at Portland, Oregon, on March 15, 1917, purporting to relinquish to the United States all claim or right in the lands applied for by the said Johanna C. Shane, as above described; said letter, and each, every, and all of said enclosures being of and concerning the said scheme and artifice to defraud fully set out, described and detailed in Count One of this indictment.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Dated at Portland, Oregon, this 28th day of February, A.D. 1918.

A TRUE BILL.

FRANK E. ANDREWS,
Foreman — *United States Grand Jury*,
JOHN J. BECKMAN,
Assistant United States Attorney.

Filed March 1st, 1918.

G. H. MARSH,
Clerk.

FORM NO. 52

Demurrer Interposed to Indictment.

Byron v. United States, 259 Fed. 371 (C. C. A. 9th Cir.).

(Title of Cause.)

Now comes the defendant, Carlos L. Byron, by P. V. Davis his attorney, and says that the indictment herein and the matters

and things therein set forth, are as therein set forth and alleged, not sufficient in law to compel him to answer thereto, and he therefore demurs to said indictment, as a whole, and demurs to each and every of the five separate counts thereof, severally, without specifically repeating his objections to each of said counts by special and separate reference thereto, on the following grounds and for the following reasons, viz.:

I

That said indictment, and each and every count thereof, fails to state facts sufficient to charge the defendant with any crime or offense against the United States or any law thereof, and does not describe any crime or offense in violation of or punishable under any of the laws thereof.

II

That said indictment and each and every count thereof is duplicitous, and is not specific enough, is repugnant, and too vague, indefinite, ambiguous and uncertain to charge any facts sufficient in law to constitute any crime or offense, or to fully inform this defendant of the charge against him, or to make the same clear to the common understanding.

P. V. DAVIS,

Attorney for Defendant, Carlos L. Byron.

Filed March 18, 1918.

G. H. MARSH, Clerk, by K. F. FRAZER, Deputy.

FORM NO. 53

Motion in Arrest of Judgment.

Byron *v.* United States, 259 Fed. 371 (C. C. A. 9th Cir.).

(Title of Cause.)

And now after verdict against the defendant Carlos L. Byron and before sentence, comes the defendant Carlos L. Byron in his own proper person, and by P. V. Davis and E. M. Comyns, his attorneys, and moves the court here to arrest judgment herein and not pronounce judgment herein against said defendant, for the following reasons, to wit:

INDICTMENT FOR CONSPIRACY TO VIOLATE POSTAL LAWS [FORM 54

1. That the facts as stated in the indictment, and in each and every of the counts thereof, do not constitute any crime or misdemeanor under the laws of the United States.
2. The indictment is duplicitous, ambiguous, indefinite and uncertain, and is insufficient to enable the accused to make his defense, or to properly inform him of the charges against him, or to enable one of common understanding to know and understand the nature of the charges against him.
3. The indictment is not sufficient in form or substance to enable this defendant to plead the judgment in bar of another prosecution for the same offense.

CARLOS L. BYRON,
Defendant.
P. V. DAVIS,
E. M. COMYNS,
Attorneys for Defendant.

We the undersigned attorneys for the defendant hereby certify that we believe the above motion meritorious and well founded in law.

P. V. DAVIS,
E. M. COMYNS.

Filed April 27, 1918. G. H. MARSH, *Clerk.*

FORM NO. 54

Indictment for Conspiracy to Violate Postal Laws.

Holsman, et al. v. United States, 248 Fed. 193 (C. C. A.
9th Cir.).

**IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE
SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.**

At a stated term of said court, begun and holden at the city of Los Angeles, county of Los Angeles, within the Southern Division of the Southern District of California, on the second Monday of July, in the year of our Lord one thousand nine hundred and fourteen.

The Grand Jurors of the United States of America, chosen, selected and sworn, within and for the division and district aforesaid, on their oath present:

That Charles K. Holsman, Henry L. Giles, Gideon M. Freeman, Ambrose C. Sims and Otto C. Joslin (since deceased), whose full and true names are, and each of them is, other than as herein stated, to the grand jurors unknown, hereinafter in this indictment called defendants, on or about the 1st day of January, in the year of our Lord one thousand nine hundred and twelve in the city of Los Angeles, county of Los Angeles, State of California, in said Southern District of California, Southern Division, did then and there unlawfully, willfully and feloniously conspire, combine, confederate and agree together to commit an offense against the United States, that is to say, the said defendants did then and there knowingly and unlawfully conspire, combine, confederate and agree together in devising and intending to devise a scheme and artifice to defraud certain persons, to wit, any and all persons who could be induced to send defendants money, as hereinafter stated, and it was a part of said conspiracy, for the purpose of executing said scheme and artifice to defraud, and attempting so to do, to place and cause to be placed, letters, packages, circulars and advertisements, in the United States postoffice at Los Angeles, California, and stations thereof, and street and letter boxes of the United States and other authorized depositories for mail matter in said city of Los Angeles, to be sent and delivered by the post office establishment of the United States, the nature, character and contents of said letters, packages, circulars and advertisements, except as hereinafter stated in the description of said scheme and artifice to defraud, being to the grand jurors unknown, and which said scheme and artifice to defraud was in substance as follows:

Said defendants intended to place and cause to be placed, divers advertisements in certain newspapers circulating generally throughout the western and southern part of the United States by means of the postoffice establishment of the United States and otherwise and published within the United States and in said Southern Division of said Southern District of California, wherein it should and would be set forth in substance and effect that the said Gideon M. Freeman was a physician practicing in the city of

INDICTMENT FOR CONSPIRACY TO VIOLATE POSTAL LAWS [FORM 54]

Los Angeles, California, and especially and specifically qualified to treat diseases of men, that is to say, among other diseases, loss of vitality, lost manhood and declining manly power, and could and would cure any person afflicted with such diseases; that by means of said advertisements said defendants intended to cause and induce divers persons to communicate and open correspondence with them in the name of said defendant Gideon M. Freeman, by means of the postoffice establishment of the United States, relative to their real or supposed symptoms or ailments; that when said persons so intended to be defrauded communicated with said defendants by the means aforesaid, said defendants intended to write and communicate with said persons by means of letters to be sent through said postoffice establishment enclosing a symptom blank in each of said letters, and advising each of said persons to answer carefully all questions contained in said blank, relative to his real or supposed ailments, and to send the same and a sample of such person's urine, to said Freeman, who would make a thorough study and analysis of same and then would be able to treat such person as well as if he were in said Freeman's office; and that nothing would be left undone by said Freeman to restore said persons to full vigor and health, and, irrespective of any symptoms that might be disclosed to defendants by said blanks and samples of urine, and even where said blanks and urine disclosed a normal physical and mental condition, and without any attempt by analysis of said urine or by careful examination of said symptom blank, or otherwise, to ascertain whether or not such persons were actually suffering from such a disease or any disease whatever, or believed themselves to be suffering therefrom, defendants intended, in letters to be sent to said persons through the postoffice establishment of the United States, to state to such persons, and induce them to believe, that their condition was thoroughly understood by defendants and that such persons were right in attending to their trouble at once, as such trouble, if neglected, would steadily become worse and gradually undermine the general health, wreck the nervous system, and result in the total loss of manhood, of such persons, and defendants intended to state to and advise such persons in such letters to commence treatment at once, and that if such persons wished to avail them-

selves of said Freeman's treatment and advice, to forward to the secretary of said Freeman money to pay for a month's treatment, or if the entire three months' course of treatment was desired to send the entire amount therefor, which amount defendants intended to place at considerably less than three times the amount to be fixed for one month's treatment, which latter amount defendants intended to fix at different amounts to the different individuals; the basis upon which said amounts would be fixed and the different amounts defendants intended to so fix, being to the grand jurors unknown. Said statements, representations and advice so intended to be so made and given to said persons so to be defrauded as aforesaid, were not intended by said defendants to be made in good faith for the purpose of ascertaining the physical and mental condition of said persons, so that defendants could in good faith furnish treatment to cure and alleviate such condition; but were intended to be made by defendants for the purpose of inducing said persons to believe they were seriously afflicted with a disease of the urogenital organs, regardless of whether said persons were so afflicted or not, and to induce said persons to send and pay money to said defendants in cases where no treatment at all, physical or mental, was needed, and to induce others of such persons to pay for more treatment than the actual physical and mental condition of said other persons so to be defrauded required.

And the said defendants, within the jurisdiction aforesaid, in pursuance of said conspiracy, and to effect the object thereof, did, on the 12th day of October, 1912, place and cause to be placed in the postoffice in said city of Los Angeles, or in a station, street box or letter box thereof, to be sent and delivered by the post-office establishment of the United States, a certain letter directed "Mr. Clyde L. Coon, Kingman, Arizona, Box #741", a copy of said letter being as follows, to wit:

"All communications strictly confidential.

Consultation and advice free in person or by mail.

Daily office hours: 9 A.M. to 8 P.M. Sundays: 10 to 1.

G. M. FREEMAN, M.D.

The Leading Specialist for Men.

327½ South Spring Street.

INDICTMENT FOR CONSPIRACY TO VIOLATE POSTAL LAWS [FORM 54

Largest and best equipped office in the west.

Confidential letters, money orders, drafts, etc. will reach us safely addressed to my secretary, A. C. Sims, 327½ S. Spring Street, Los Angeles, Cal.

I confine my practice to the special, private, chronic and genito-urinary diseases of men.

Los Angeles, Cal., October 12, 1912.

Mr. Clyde L. Coon,
Box 741, Kingman, Arizona.

My Dear Sir: —

Your symptom blank is now before me and your remarks and symptoms have been carefully considered. I have subjected the sample of urine to a thorough analytic test and have come to the conclusion that I thoroughly understand your condition and have no experiments to make. You are right in attending to this trouble at once, for if neglected, it would surely undermine your nervous system and result in a total loss of manhood.

The loss of the vital fluid during sleep and in the urine is a serious drain on one's system and you will readily understand the importance of having this drain stopped as soon as possible.

Should you wish to avail yourself of my treatment and advice, you will please forward me the cost of same, which will be \$35, payable \$15 cash, \$10 in thirty days and \$10 in sixty days, or if you desire to pay all cash, I will accept \$30 in full payment for the three months' treatment.

I have treated and cured thousands of men afflicted as you are, and I am sure should you place your case with me and take my treatment, following my instructions, you will never regret the small outlay, but on the other hand you will be more than grateful that you have taken my treatment and followed my advice, for I will certainly restore you to perfect virility and keen vigor in a very short while. You will improve soon after you have placed your case under my treatment and it will not interfere with your work whatsoever. You will become filled with magnetism and will improve not only physically but mentally as well, for there is a very close connection between the nerves of the sexual organs and those of the brain.

Trusting that you will write me by return mail letting me know what disposition to make of your correspondence, and assuring you of my very best attention should you place your case in my hands, and guaranteeing you that the benefits you will derive from my treatment will be worth to you many times the amount you pay, I am,

Very faithfully yours,
G. M. FREEMAN, M.D."

And the grand jurors aforesaid, on their oaths aforesaid, do further present the said defendants, in further pursuance of said conspiracy and to further effect the object thereof, did, on the 30th day of August, 1912, place and cause to be placed in the postoffice in the said city of Los Angeles, or in a station, street box or letter box thereof, to be sent and delivered by the postoffice establishment of the United States, a certain letter, directed, "Cicero Hickman, Deming, New Mexico, Box 382", a copy of said letter being as follows, to wit:

"All communications strictly confidential.

Consultation and advice free in person or by mail.

Daily office hours: 9 A.M. to 8 P.M. Sundays: 10 to 1.

G. M. FREEMAN, M.D.

The Leading Specialist for Men.

327½ South Spring Street.

Largest and best equipped office in the west.

Confidential letters, money orders, drafts, etc., will reach me safely addressed to my secretary, A. C. Sims, 327½ S. Spring Street, Los Angeles, Cal.

I confine my practice to the special, private, chronic and genito-urinary diseases of men.

Los Angeles, Cal., Sept. 1, 1912.

Mr. Cicero Hickman,

Deming, New Mexico.

My dear Sir: —

Your symptom blank is now before me and your remarks and symptoms have been carefully considered.

Having made a specialty of trouble such as yours for the past twenty years or more, I thoroughly understand your condition

INDICTMENT FOR CONSPIRACY TO VIOLATE POSTAL LAWS [FORM 54

and have no experiments to make. My record of curing such trouble is one of unbroken success.

I have subjected your sample of urine to a careful analytical test and have come to the conclusion that you are losing semen in your urine and during sleep, and this is a very serious drain on one's whole system. These drains are sapping the very life blood from you and weakening you not only physically but mentally as well, for there is a very close sympathetic connection between the nerves of the sexual organs and the brain. The loss of one drop of semen without venereal orgasm weakens a man as much as the loss of one ounce of blood, and when you are losing several drops of the vital fluid daily, you can readily estimate the seriousness of such a drain and see how necessary it is to have it stopped as soon as possible.

Should you wish to avail yourself of my treatment and advice, my fee will be \$35, payable \$15 cash, \$10 in thirty days and \$10 in sixty days, or if you are in position to pay a cash fee, I will accept \$30 in full payment. Upon receipt of your remittance for whichever amount you wish to send, I will prepare and forward you at once the necessary treatment for the first month.

You will improve soon after you have placed yourself under my treatment and it will not interfere with your work whatsoever.

Kindly write me a line by return mail so that I may know what disposition to make of your correspondence, as I do not wish to annoy you with needless letters. Assuring you of my very best attention should you place your case with me, and guaranteeing you that the benefits you will derive from my treatment will be worth to you many times the amount you pay, I am,

Very faithfully,
G. M. FREEMAN, M.D."

Contrary to the form of the statutes of the United States in such case made and provided, and against the peace and dignity of the said United States.

ALBERT SCHOONOVER,
United States Attorney.

(Endorsed) : Form No. 456. No. 903 Crim. United States District Court, Southern District of California. The United States

of America *v.* Charles K. Holsman, Henry L. Giles, Gideon M. Freeman, Ambrose C. Sims and Otto C. Joslin (since deceased). Indictment for viol. Sec. 37, Act Mch. 4, 1909, Ch. 311. Conspiracy to violate Sec. 215, Act Mch. 4, 1909, Ch. 321. Using mails in scheme to defraud. A true bill. Fred W. Beau De Zart, foreman. Presented and filed in open court, this 6th day of January, A. D. 1905. Wm. M. Van Dyke, clerk; by Leslie S. Coyler, deputy clerk.

FORM NO. 55

Demurrer.

Holsman, et al. *v.* United States, 248 Fed. 193 (C. C. A. 9th Cir.).

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

THE UNITED STATES OF AMERICA,
Plaintiff,
v.
GIDEON M. FREEMAN, et al.,
Defendants.

Now comes the defendant, Gideon M. Freeman, and demurs to the indictment on file herein on the following grounds, to wit:

I

That said indictment does not state facts sufficient to constitute a public offense.

II

That said indictment is multifarious in that each of said letters set forth in said indictment constitute each a separate and distinct offense and more than one offense is charged in said indictment without being separately set forth or stated and that more than one offense is set forth in the same count without being separately stated.

III

That said indictment is uncertain and indefinite in this, that it does not state, nor can it be ascertained therefrom, whether the statements contained in said letters, or in either of said letters, are true or false, nor whether the diagnosis set forth in said letters is true or false, nor whether the addressees of said letters suffered as in said letters set forth, nor whether any money was received by defendants or any of them, nor in what newspapers said advertisements were set forth, nor what said advertisements contained, nor whether any symptom blank or diagnosis sheet was sent to either of the addressees of said letters, nor whether any symptom blank or diagnosis sheet was filled out or sent unto the defendant or any of the defendants, nor what the statements in said symptom blanks or diagnosis sheets were, nor what representations or statements were made by either of the addressees of said letters unto the defendant or defendants as to their ailments or supposed ailments; nor can it be ascertained therefrom upon what information the letters alleged to have been written were written and the advice therein given, nor what the letters, to which the ones set forth in the indictment are answers, contained or represented or set forth, nor whether or not the said addressees of said letters did really and in fact suffer as set forth in said letters and as advised, as alleged by defendants, nor whether said addressees of said letters set forth in the indictment did suffer any ailment or did suffer the ailments set forth in said letters.

Wherefore, the defendant asks that this demurrer be sustained and this indictment be dismissed.

GEO. S. HUPP,
FRANK C. HILL,
LYNDEN BOWRING,

Attorneys for Said Defendant Gideon M. Freeman.

The Holsman case involved questions of use of decoy letters in evidence, inconsistent instructions, admissions of co-conspirators and restrictions of cross-examinations. It settles largely the practice in the Ninth Circuit. The rule is more liberal for the defendant in other circuits. Consult index.

FORM NO. 56

Demurrer of Co-Defendant.

Holsman, et al. v. United States, 248 Fed. 193 (C. C. A. 9th Cir.).

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHARLES K. HOLSMAN, et al.,
Defendants.

Comes now defendant Charles K. Holsman and demurs to said indictment, and for cause of demurrer alleges:

I

That said indictment does not state facts sufficient to constitute an offense against the United States, or the laws thereof;

II

That said indictment does not state facts sufficient to constitute an offense, in this, to wit:

1. That said indictment does not sufficiently set out a scheme to defraud;
2. That said indictment does not allege that said scheme devised by defendants was by means of false or fraudulent pretenses, representations, or promises;
3. That said indictment does not allege how said scheme was to be executed;
4. That said indictment does not allege that the persons to be defrauded had ever seen said letters, or had any knowledge of them, or were in anywise deceived thereby, or that the same were intended to deceive anyone;
5. That said indictment does not allege that said scheme set

out therein was used or intended to defraud, or was illegal, or that the same was calculated to deceive a person of ordinary comprehension or prudence;

6. That said indictment does not allege that the representations as to the ability, experience, and treatment which defendants are alleged to have made, were not made in good faith, and under an honest belief in their truth;

7. That said indictment does not directly and positively set out the specific scheme or artifice which it is alleged defendants entered into or devised.

III

That said indictment attempts to charge two separate and distinct offenses, to wit, two offenses to use the mails of the United States in a scheme to defraud, which said alleged offenses are not separately stated, but are joined in one count of said indictment; that said indictment has attempted to charge under one count and not by separate statements in two counts, a conspiracy to defraud by means of the postoffice establishment, and the actual commission of the crime of depositing in the postoffice two separate and distinct letters addressed to different persons, at different times and directed to different towns, in the execution of a scheme to defraud.

IV

That said indictment was not found within three years next after said alleged offense was committed, and that same is barred by the statutes of the United States and cannot now be prosecuted, tried, or punished.

WHEREFORE, defendant Holsman prays that said indictment be dismissed and he be allowed to go hence.

CHARLES H. FAIRALL,
Attorney for Defendant Holsman.

This form was selected merely as an example of a form and not because the author believes the points raised by this demurrer to be well taken. He expresses no opinion thereon.

FORM NO. 57

**Indictment for Conspiracy to Violate United States Postal
Laws.**

Vane *v.* United States, 254 Fed. 28, 32 (C. C. A. 9th Cir.).

IN THE DISTRICT COURT OF THE UNITED STATES WITHIN AND
FOR THE DISTRICT OF IDAHO, NORTHERN DIVISION.

UNITED STATES OF AMERICA,

Plaintiff

v.

WILLIAM VANE, LONNIE EASLEY, JOE BOSSIO

and EUGENE NACCARATO,

Defendants.

The Grand Jurors of the United States of America, being first duly impaneled and sworn, within and for the District of Idaho, Northern Division, in the name and by the authority of the United States of America, upon their oaths do find and present:

That heretofore, to wit: on or about the 6th day of September, A.D. 1914, in Bonner County, Northern Division, District of Idaho, and within the jurisdiction of this Court, William Vane, Lonnie Easley, Joe Bossio and Eugene Naccarato did willfully, unlawfully and feloniously conspire, combine, confederate and agree together to commit an offense against the United States in the manner following, to wit: that at the time and place aforesaid they, the said William Vane, Lonnie Easley, Joe Bossio and Eugene Naccarato, then and there being, did conspire, combine, confederate and agree together as aforesaid, by force and violence to rob one Hugo Dewitz of certain mail matter, which mail matter constituted a part of the United States mails under the control of the postoffice establishment of the United States and in the lawful charge and custody of him, the said Hugo Dewitz, and which said robbery of the aforesaid mail matter was then and there agreed among them, the said William Vane, Lonnie Easley, Joe Bossio and Eugene Naccarato, to be effected by force and violence and by placing the life of him, the said Hugo Dewitz, in jeopardy by the use of certain dangerous weapons, to wit, certain pistols and

certain rifles loaded with gunpowder and leaden bullets, with which said dangerous weapons it was then and there agreed by the said William Vane, Lonnie Easley, Joe Bossio and Eugene Naccarato to threaten him, the said Hugo Dewitz, and to put his life in peril, and thereby to take, steal and carry away from the possession of the said Hugo Dewitz and against his will the aforesaid mail matter;

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further find and present, that in accordance with and pursuant to the said conspiracy, confederation and agreement among themselves had as aforesaid, the said Lonnie Easley, Joe Bossio and Eugene Naccarato did by force and violence upon the 8th day of September, 1914, rob the said Hugo Dewitz of the said mail matter and did threaten him the said Hugo Dewitz and put his life in peril.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

J. R. SMEAD,

*Assistant United States District Attorney
for the District of Idaho.*

H. B. KINNEAR,

Foreman of the United States Grand Jury.

FORM NO. 58

Bail Bond.

Vane *v.* United States, 254 Fed. 28, 32 (C. C. A. 9th Cir.).

(Title of Cause.)

An order having been made on the 7th day of February, 1919 by Ignatz Weil, a United States Commissioner, that the above named William Vane be held to answer and to appear on the first day of the next term of the above entitled court, to be held at the City of Coeur d'Alene, in the State of Idaho, upon a charge of conspiring and confederating with Lonnie Easley, Joe Bossio and Eugene Naccarato to hold up and rob the stage carrying the mails of the United States running between Priest River and Coolin, in the State of Idaho, upon which he has been admitted

to bail in the sum of Twelve thousand (\$12,000.00) Dollars, and which charge is pending in that court against him.

Now, we, the undersigned, William Vane as principal and Mary Vane, his wife, a resident of Newport, Idaho, and Ruby Vane, of Newport, Idaho, and Clarence L. Ford, a resident of Newport, Idaho, and Minnie E. Ford, a resident of Newport, Idaho, as sureties, hereby undertake that the above named William Vane will appear and answer the charge above mentioned in the above entitled court, and will at all times hold himself amenable to the order and process of said court, and if convicted will appear for judgment and render himself in execution thereof or if he fail to perform either of these conditions that we will pay the United States the sum of Twelve thousand (\$12,000.00) Dollars.

Dated this 17th day of February, 1917.

WILLIAM VANE,
MARY VANE,
RUBY VANE,
C. L. FORD,
MINNIE E. FORD.

State of Idaho, } ss.
County of Bonner. }

MARY VANE and RUBY VANE, being each severally sworn, each for herself deposes and says: That she is a resident and freeholder in the State of Idaho, and is worth the sum in said undertaking specified as the penalty thereof, over and above all her just debts and liabilities, exclusive of property exempt from execution.

MARY VANE
RUBY VANE

Subscribed and sworn to before me this 19th day of February, 1917.

(Seal)

IGNATZ WEIL,
United States Commissioner for said Northern
Division, District of Idaho.

State of Idaho, } ss.
County of Bonner. }

CLARENCE L. FORD and MINNIE E. FORD, being first severally sworn on oath deposes and says: That they are husband and wife,

and that they are residents and freeholds in said County and State, and are worth the sum of Eight thousand (\$8,000.00) Dollars, over and above all their just debts and liabilities, exclusive of property exempt from execution.

C. L. FORD

MINNIE E. FORD.

Subscribed and sworn to before me this 17th day of February, 1917.

(Seal)

IGNATZ WEIL,

Filed June 28, 1917, *United States Commissioner for said W. D. McREYNOLDS, Clerk. Northern Division, District of Idaho.*

FORM NO. 59

Arraignment.

Vane *v.* United States, 254 Fed. 28, 32 (C. C. A. 9th Cir.).

UNITED STATES OF AMERICA

v.

WILLIAM VANE, *et al.*

Comes now the District Attorney with the defendants William Vane, Lonnie Easley, Joe Bossio and Eugene Naccarato into court, the defendants to be arraigned upon the indictment charging the defendants with the crime of robbery of mail. The defendants William Vane, Joe Bossio and Eugene Naccarato were represented by R. E. McFarland, Esq., who was present; the reading of the indictment was waived by each of the defendants, who were furnished with true copies thereof, upon order of the court. The Court asked each of the defendants if the name by which he was indicted was his true name, and each defendant for himself, replied in the affirmative. Counsel waived time in which to plead, on the part of his clients, whereupon the Court asked the defendants William Vane, Joe Bossio and Eugene Naccarato, each for himself, if he pleads guilty or not guilty of the offense charged in the indictment, and each defendant for himself, pleaded not guilty. Whereupon the Court set trial of the defendants William Vane, Joe Bossio and Eugene Naccarato for 9:30 A.M. Friday, June 8th, 1917, and fixed 9:30 A.M., June 4th, 1917 as time for the defendant Lonnie Easley to plead to the indictment.

FORM NO. 60

Order Consolidating Indictments for Trial.

Vane *v.* United States, 254 Fed. 28, 32 (C. C. A. 9th Cir.).

UNITED STATES OF AMERICA

v.

WILLIAM VANE.

These causes came regularly on for trial before the Court and a jury, as to the defendants William Vane, Joe Bossio and Eugene Naccarato, the said defendants being present with their counsel R. E. McFarland and J. O. Bandelin; J. R. Smead, Assistant District Attorney, appearing for the United States. Upon agreement of counsel, it was ordered that all witnesses be excluded from the court room until such time as they were called to testify, and that causes numbered 1391 and 1392 be consolidated for the purpose of trial.

FORM NO. 61

Verdict.

Vane *v.* United States, 254 Fed. 28, 32 (C. C. A. 9th Cir.).

(Title of Cause.)

We, the jury in the above entitled cause, find the defendant William Vane, guilty; and we find the defendant Joe Bossio, guilty; and we find the defendant Eugene Naccarato, guilty as charged in the indictment; but without putting in jeopardy the life of the custodian, Hugo Dewitz.

A. B. CARSCALLEN,
Foreman.

Filed Nov. 23, 1917.

W. D. McREYNOLDS, *Clerk.*

FORM NO. 62

Judgment.

Vane *v.* United States, 254 Fed. 28, 32 (C. C. A. 9th Cir.).

(Title of Cause.)

Now, on this 24th day of November, 1917, the United States District Attorney, with the defendants and their counsel, R. E.

McFarland, Esq., came into court; the defendants were duly informed by the Court of the nature of the indictment found against them for the crime of robbery of United States mail, committed on the 8th day of September, A.D. 1914; of their arraignment and plea of Not Guilty as charged, of their trial and the verdict of the jury on the 23rd day of November, A.D. 1917, "Guilty as charged in the indictment, without putting in jeopardy the life of the custodian." The defendants were then asked by the Court if they had any legal cause to show why judgment should not be pronounced against them, to which they replied that they had none and no sufficient cause being shown or appearing to the Court.

Now, therefore, the said defendants having been convicted of the crime of robbery of the United States mail;

It is hereby considered and adjudged that the said defendants, Joe Bossio and Eugene Naccarato, be imprisoned and kept in the U. S. Penitentiary at McNeil's Island, Washington, for a term of four years, and that the defendant, William Vane, be imprisoned and kept in the U. S. Penitentiary at McNeil's Island, Washington, for a term of six (6) years, and it is further ordered and adjudged that said defendants be and are hereby remanded to the custody of the United States Marshal for the District of Idaho, to be by him delivered into said prison and to the proper officers thereof.

FORM NO. 63

Commitment.

Vane *v.* United States, 254 Fed. 28, 32 (C. C. A. 9th Cir.).

(Title of Cause.)

UNITED STATES OF AMERICA,
District of Idaho, — SS.

The President of the United States to the Marshal of the District of Idaho, or to his Deputy, and to the Keeper of either of the Jails in our said District, Greeting :

WHEREAS, at the November Term of the above entitled Court William Vane was duly convicted of the crime of Robbery of United States Mail, contrary to the form of the Statute in such

case made and provided, and against the peace and dignity of the United States of America, for which offense he hath this day been sentenced by our said Court to be imprisoned in the United States Penitentiary at McNeil's Island, Washington, and to be there kept for the term of six years and to stand committed till this sentence be performed.

NOW THIS IS TO COMMAND YOU, the said Marshal or Deputy, to take and keep and safely deliver the said Defendant into the custody of the Keeper or Warden in charge of said prison forthwith.

AND THIS IS TO COMMAND YOU, the said Keeper or Warden in charge of the said Prison, to receive from the said Marshal or Deputy the said Defendant convicted and sentenced as aforesaid, and him keep and imprison in accordance with said sentence, or till he be otherwise discharged by law. Hereof fail not at your peril.

WITNESS the Honorable Frank S. Dietrich, Judge of our said Court, and the seal thereof affixed at Cœur d'Alene, in said District, this November 24th, 1917.

(Seal)

W. D. McREYNOLDS,

Clerk.

Returned and filed Nov. 30, 1917.

W. D. McREYNOLDS, *Clerk.*

I hereby certify that I received the within Commitment at Cœur d'Alene, Idaho, on Nov. 24, 1917, and that I executed the same by delivering William Vane, the defendant named herein, into the custody of the Warden of the United States Penitentiary at McNeil Island, Washington, on November 28th, 1917, as within I am commanded.

T. B. MARTIN,

U. S. Marshal.

FORM NO. 64

Charge to Jury — Using the Mails to Defraud.

United States *v.* Collins (Unreported).

United States District Court, Southern District of New York

THE COURT (Hunt, J.): I will endeavor to be brief, because counsel have had ample opportunity to refresh your recollection

CHARGE TO JURY — USING THE MAILS TO DEFRAUD [FORM 64]

of the testimony and to present their respective views concerning those deductions or inferences which they think are justified to be drawn from it.

There are some preliminary matters which it is proper to address to your attention. Primarily, gentlemen, you will disregard any statements that may have been made with respect to the methods of the entry into the place of business of these defendants, or any of them, by the officials of the United States. By that I mean to say, gentlemen, that the question of whether or not the Post Office authorities lawfully went there, is outside of this case. For the purpose of the consideration of the ultimate questions of fact which you are to determine, you will take the papers and the evidence that has been presented here upon the trial and not consider whether or not the authorities were lawfully entitled to enter these rooms.

You will also, gentlemen, bear in mind another thing, that in the course of a long trial, lasting as this has, I think thirty-eight or thirty-nine days, and where there have been, I think, about 111 witnesses examined and many hundreds of documents read, that at times counsel, in the advocacy of the rights of their clients the Government on the one hand and the defendants on the other may have indulged in certain acrimonious discussions and may have commented upon things, to which often exceptions have been preserved, but you will disregard those things which may be extraneous to the matters which are put before you properly for decision. You will take the case solely upon the evidence that has been admitted before you, heeding the arguments of counsel in applying it and accepting the propositions of law laid down to you by the Court as those which should control your deliberations.

You will remember, gentlemen, that at the outset there have been, at various times, certain limitations put upon the applicability of certain evidence that has been introduced to you. For instance, evidence has been admitted in some instances as far as it might bear against one defendant and not as against another. The most recent illustration of that that comes to my mind is within the past few days where certain evidence was offered with regard to the earlier history of the life and doings of the defendant Collins. Of course what the defendant Collins was doing long

before it was ever contended he came in contact with any of the other defendants would only bear upon Collins himself, and the purpose of its admission with respect to Collins was, in so far as it might have to do with the question of the accuracy or inaccuracy of the statement that he had made upon direct examination and in so far as it might have to do with relation to any intent with which he might be charged to have done the thing charged against him in the particular indictment under which he is tried. There were other instances, but I cite that. You will call them to mind and apply the rule I have laid down from time to time restricting the evidence.

You will also, gentlemen, consider the question of the guilt or innocence of each of these defendants, first bearing in mind he has the right to have the evidence separately applied to him. While the indictment charges them all jointly the presumption as to each defendant, of course, is that he is innocent, and he has a right to have the evidence applied to him exactly as if he came to trial alone.

Now, gentlemen, there are some general presumptions of law which I think will perhaps help you to decide this case if borne in mind. One is that a witness speaks the truth. This presumption, however, may be overcome by his manner upon the witness stand; by evidence of contradictory statements, or by proof which affects his character for truth and veracity. You will bear in mind also that the question of the credibility of a witness is exclusively for the jury. The Court cannot help you in that one bit. In determining where truth lies, the twelve jurors are exclusively the judges. Now, I have spoken of the presumption of innocence that applies to each and every defendant. In all criminal cases the law casts upon the government the burden of overcoming this presumption and demands the measure of proof shall be such as to satisfy the jury beyond a reasonable doubt. Now, throughout many, many years, learned men in England and America have tried to define what is a reasonable doubt. Perhaps no better definition — I do not know of any in such experience as I have had, exists, than that laid down by the great Judge, Chief Justice Shaw of Massachusetts, some years ago, in charging a jury, and I give it to you as he used it.

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"A reasonable doubt, as I used the words throughout what I may say to you, is not such a doubt as any man may start by questioning for the sake of doubt, nor doubts suggested or surmised without foundation in the facts or testimony. It is such a doubt only as a fair or reasonable effort to reach a conclusion upon the evidence, using the mind in the same manner as in other matters of the highest importance, prevents the jury from coming to a conclusion in which their minds rest satisfied. If so using the mind, and considering all the evidence produced, it leads to a conclusion which satisfies the judgment and leaves upon the mind a settled conviction of the truth of the fact, it is the duty of the jury so to declare by their verdict. It is possible always to question any conclusion derived from the testimony, but such questioning is not what is a reasonable doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge."

It has been told to you by the District Attorney that the judgment of the law is the responsibility of the Court. So it is. I repeat that under the Federal practice a judge may have, if he sees fit, the right even to comment upon the facts of the case, and I think he might even go so far as to express an opinion; but never can such an opinion or such comment, if it carries with it an opinion, invade what I have defined to be your exclusive right. So that we come to the proposition that in entering upon the final stage of the case your responsibility is to take the evidence, weigh it, and render a just verdict between the government of the United States and these defendants.

Now this brings us directly to the charges themselves, and I think perhaps it will clarify the consideration of the case if we take up the first count of the indictment first. That is the conspiracy count. You will remember that there are five counts, one, which is the first, charges conspiracy. I will just recapitulate what its essential averments are, taking the first count.

It is alleged that from June 12, 1907, and continuously from that date, to and including the 30th day of December, 1909, these defendants engaged in a corrupt conspiracy to commit

offenses against the United States, by devising and intending to devise a scheme and artifice to defraud divers persons of their money and property, by inducing such persons intended to be defrauded to give their money and property in the purchase of shares of the Collins Wireless Telephone Company, a District of Columbia corporation, and also shares of stock of divers other wireless telephone associations to be incorporated under the laws of divers States, which corporations were to be related to the Collins Wireless Telephone Company, as might be determined to be best adapted for deceiving and defrauding the people out of their money, the intention of the defendants being to induce people so intended to be defrauded to buy stock in the various wireless companies referred to by Collins, and by artifices as to the sale of the Collins Company stock in combination with shares of the other referred to wireless telephone companies in such way as might be best adapted to deceive and defraud. The indictment charges that it was a part of the scheme and artifice to have the people pay their money in purchase of the Collins stock and all such other companies by falsely and fraudulently representing that the stock of the Collins Company was one of the best investments offered to the public, and one of the best opportunities, presenting large returns in dividends; that the Collins shares were being offered to the public direct; that the company would receive the money paid by purchasers of the stock; and that the money would be used as the working capital for the development and extension of the business of the company in promoting the establishment of the wireless telephone in commercial operation; that the stock of the Collins Company was being sold for the sole purpose of financing it; that it was being sold in allotments made from time to time, and the prices at which the allotments were to be sold were fixed by the company; that advances in the prices of successive allotments would benefit the company, because an investment in the shares of the Collins Company was a desirable and good investment; and that the contemplated advances made it advantageous to purchase without delay. It is charged that it was represented that the Collins Company was a commercially operating company, operating a wireless telephone system, and was making and selling wireless telephones for commercial use;

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that the company was prepared to go into the business of furnishing wireless telephones for use in factories, ships, mines and vessels, and was prepared to bid for the installation of wireless telephone systems in competition with systems of wireless telephone, and to establish and conduct a practical and workable inter-communicating system of wireless telephony, and thereby eliminate expense of franchises, contacts, poles, wires, and central offices; that the Collins Company was responsibly and ably managed by its board of directors, all of whom had carefully investigated the system before becoming identified with it. It is charged that it was represented that A. Frederick Collins was the inventor; that the telephone was ready for immediate commercial use; that no obstacle remained in the way of the broadest use, and that the telephone was so perfected that it was practical for any two subscribers to talk to each other without requiring central stations; that the wireless telephone was particularly adapted for use in rural districts; and that by using it upon automobiles it would be practicable for persons to keep in touch with a near-by garage and never be cut off from communication. It is charged that as further part of the scheme, and to induce persons intended to be defrauded to buy stock and to mislead them by showing experiments in various parts of the United States and publishing articles in newspapers, the defendants intending to cause the persons to be defrauded to believe the experiments were proof of the commercial practicability of the wireless telephone invented by Collins, the patent of which was owned by the Collins Company, whereas it is charged as the defendants well knew the experiments did not demonstrate that the wireless telephone was commercially practicable or valuable.

It is charged that the defendants, as a part of the conspiracy, intended to effect a scheme by opening and intending to open correspondence with various people intended to be defrauded through the postoffice establishment, and that as a part of the conspiracy the postoffice in New York was to be used and divers other postoffices were to be used, and letters, circulars and pamphlets were to be sent out and delivered by the postoffices of the United States.

Then come the allegations of overt acts. It is charged (1) that

the defendant Speer at New York about August 8, 1907, occupied an office at 50 Broadway; (2) that, to effect the object of the conspiracy, defendant Collins, about October 13, 1908, gave an exhibition of wireless telephony at the New York Electrical Show in Madison Square Garden; (3) that the defendant Speer about October 1, 1909, talked with one E. S. Canman relating to obtaining the services of Canman in securing and appointing agents throughout the various parts of the United States to sell (shares) to persons intended to be defrauded.

Let us keep to the subject of conspiracy for a few minutes. The statute under which the first count, the substance of which I have just read to you, is drawn, reads as follows:

"If two or more persons conspire either to commit any offense against the United States or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, all the parties to such conspiracy shall be liable to a penalty of not more than \$10,000 or to imprisonment for not more than two years or to both fine and imprisonment in the discretion of the court."

A conspiracy may be described as an unlawful confederation or combination formed by two or more persons to effect an unlawful purpose, said persons acting under a common purpose to accomplish the unlawful end desired.

The statute of conspiracy read to you requires not only that it shall be proved beyond a reasonable doubt that the unlawful combination pleaded has been entered into, and that it was to commit an offense as charged, but that one or more of the parties to the conspiracy has done an overt act as charged to effect the object of the conspiracy. There is therefore something more required than a mere mental purpose which would authorize a conviction in a case of this kind. As perhaps you have heard me say in the course of the trial, a common design is the essence of the crime of conspiracy. This may be made to appear when the parties steadily pursue the same object, when acting separately or together by common or different means, but all leading and intending to lead to the same unlawful result. When it is proven that they do so act with such common unlawful design, the principle upon which the acts and declarations of one of the conspirators in the

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prosecution of the enterprise are admitted in evidence against all the persons prosecuted, is that by the act of conspiring together the conspirators have jointly assumed as a body the attribute of individuality, so far as regards the prosecution of the common design, thus rendering the acts and declarations of one done in the furtherance of that design the acts and declarations of all. Positive evidence entirely, in the proof of a conspiracy, is not necessary to be had. From the nature of the case the evidence frequently is circumstantial or partly so. Though the common design is the essence of the charge, it is not necessary to prove that all the parties charged met together and came to an explicit and formal agreement for an unlawful scheme, or that they did directly, by words or in writing, state to each other what the unlawful scheme was to be and state to each other the details of the plan or means by which the unlawful combination was to be made effective. That is, it is not necessary that that should be shown by direct evidence. The offense is sufficiently proved if the jury is satisfied from the evidence beyond a reasonable doubt that two or more of the parties charged in any manner or through any contrivance positively or tacitly come to a mutual understanding to accomplish the common and unlawful design charged, followed by some act as charged done by one or more of the parties for the purpose of carrying it into execution. In other words, where an unlawful end is sought to be effected, and two or more persons acting by a common purpose of accomplishing that end, work together in the furtherance of the unlawful scheme, then one of such persons becomes a part of the conspiracy, although the part he was to take therein was a subordinate one, or was to be executed at a remote distance from the other conspirators.

If a conspiracy has been formed and one knowing of its existence and purpose, and with such knowledge, intentionally joins therein after the conspiracy is formed, and knowingly aids in the unlawful scheme, with the intent to promote the common design, such person becomes as much a party to the conspiracy from the time that he joins as if he had originally conspired.

Under the old common law of conspiracy, it was not necessary that there should be a proof of an overt act in furtherance of the conspiracy charged. The offense was completed when the un-

lawful concert and agreement was entered into although nothing was done in pursuance thereof, or to carry it into effect. That is to say, once upon a time in England, the law undertook to punish criminally an unexecuted intent or purpose to commit a crime, but under the statute of the United States, which I have read to you, and under which these defendants are charged in the first count of the indictment, there must be proof not only that the alleged conspiracy existed as charged, but that some one or more overt acts as charged was done by one or more of the parties charged, to effect the object of the conspiracy. It is not necessary that the overt act in itself be criminal, but it is essential that an overt act must in itself have been done by one or more of the parties to the conspiracy, and to effect the object of the combine. I might illustrate that to you in this way. I have recapitulated the general allegations of the first or the conspiracy charge of the indictment, and I have told you specifically of the three overt acts charged — one that Speer in August, 1907 occupied an office at 50 Broadway; second, that Collins, in October, 1908 gave an exhibition at the New York Electrical Show; third, that Speer, about October 1, 1909, talked with a man named Camden concerning agents to sell stock to various people. Now it is not necessary that it should be proven to have been criminal on the part of Speer to have occupied an office at 50 Broadway. In itself, of course, there was no wrong in that. Nor in itself was there any wrong in Collins giving an exhibition at the New York Electrical Show; nor in itself need there have been any wrong in Speer's talking with Camden concerning selling stock to people through agents. But if you are satisfied from the evidence beyond a reasonable doubt that the conspiracy or combination was formed and existed between two or more of the defendants as charged to defraud people by selling them stock in the Collins Company, and by misrepresenting to them, as already set forth, concerning the value of the same and its purposes, and that these overt acts just specified, or any one of them, was really done in effecting the object of such a conspiracy, then it should be considered as an overt act done to effect the object of the combination, and if so done, it would become the act of every person engaged in the unlawful combination or conspiracy while

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it existed, and it would be evidence against all the persons in the combine.

Gentlemen, much has been said about the question of intent. I have touched on that. Of course in every agreement like this charged there must be an intent on the part of the person who commits it to do that which is unlawful. Now, a question of intent resolves itself into one fact. We arrive at a man's intention by taking hold of certain circumstances, extraneous though they may be and reasoning out the purpose of the man — the doer of the thing — from that. We see a man come into the postoffice, we see him take his key out, we see him go to the box; naturally we infer from the doing of these things the purpose in his mind is to open his box and get his mail. We cannot lay hold of the intention of a man's mind, as I have had occasion to say, as we could pick up a letter. It is a mental process, but what a man's intention is is really a question of fact to be arrived at by the jury in the exercise of its discretion after considering all the circumstances and facts before them in evidence. Take the defendants in this case. What was their purpose when they entered into some of these agreements, what was the intention of the defendant Speer and the defendant Collins in the doing of the things which have been testified to? What was the intent of the defendant Vaughan when he came in? The relationship with the other defendants? What was the attitude of the defendant Reall? What was he doing? Was he a mere clerk exercising no independent authority, or was he using his own intellectual faculties for the purpose of aiding in the alleged unlawful scheme and with the intention to join in its execution and purpose, if there was any unlawful execution and purpose?

Much has been said of the good faith of the defendants. Of course, gentlemen, it is the law that if a man in good faith goes into a thing in the honest belief that what he is doing is right and proper, he cannot be convicted of crime. Good faith means honesty. It is the very opposite of bad faith. Now, take each one of these defendants, was the defendant Collins acting in good faith in doing all the things he did? Was the defendant Speer, and Vaughan and Reall? What was the purpose of their coming together? Was it as charged, to sell stock, to induce people to

buy? Take the literature that there is before you. What was the purpose of issuing it? Was what they put forth honestly put forth or intended to deceive people? Did they work together for the purpose of deceiving people, or with the intent to use the mails of the United States? A great deal of evidence has been introduced concerning experiments made. The experiment in Boston; the experiment in Philadelphia; the experiment on the Singer Building; the experiments between the Bee Hive and the Y. M. C. A. Building in New Jersey; the experiments in the Navy Yard, and perhaps others. Were they entered into in good faith? Or was it a part of an unlawful combination working toward the end of inducing people to buy shares of stock in a corporation which really had no merit in it, or was it honest? Did they believe they had a valuable invention? Did they believe it was proper to incorporate and to sell stock, and were they honest in the representations they made, or dishonest?

Take this agreement of June 12, 1907, between Collins Marine Wireless Telephone Company and Cameron Speer of Avon, New Jersey; you remember that. In that it was agreed that the party of the first part was to deliver to the party of the second part, that is, the Collins Marine Wireless Telephone Company will deliver to Speer, at his request, or on his order, such shares of stock or unto such persons as he might nominate or name, on payment by him to the party of the first part of the sum of 20 cents for each and every share of stock so delivered, the Collins Wireless Telephone Company setting forth in that agreement that it is the owner of and has in its treasury 393,174 shares of its capital stock, full paid and non-assessable, and that it was desirous of obtaining funds with which to promote the objects and carry on the business for which it was incorporated. There was a provision that the party of the second part — that Speer should make a bona fide effort to sell the stock and actually sell 25,000 shares within a period of six months, and before the sale of any of the stock now held in escrow under a certain agreement made between the party of the second part hereto and A. Frederick Collins, dated the 3rd day of June, 1907 and that the party of the second part hereto will sell 50,000 shares of the stock of the party of the first part hereto in any one year thereafter, and in

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case of its failure or neglect to comply with the conditions, then this agreement ipso facto ceased and determined, without liability on the part of the party of the first part to the party of the second part. It is further understood and agreed that the money received from the sale of the first 25,000 shares of stock of the corporation was to be used in the construction of an experimental plant and for such other purposes as may be deemed expedient by the board of trustees. The agreement further provided it should not be assigned without the consent of the party of the first part, in writing, acting by and through its properly constituted authority. I have made a little memoranda of the incorporation of some of these companies. I do not think you will find it very important, but the Collins Marine Wireless Telephone Company was incorporated as of May 23, 1908. Its capital was one million dollars, with a million shares of one dollar each. The first directors were J. A. Black, C. W. Embry, V. N. Foukes, A. F. Collins (the defendant), and T. B. Collins. The general purpose was the construction and operation of electric wireless and other telephonic or telegraphic systems.

The Collins Pacific Coast Wireless Telephone and Telegraph Company was incorporated under the laws of the State of Washington about September 25, 1909. Its general purpose was to install and operate and own wireless and other telephone and telegraph toll lines and to operate and let and lease and dispose of wireless and other telephones and telegraph instruments and to do all wireless and other telephone and telegraph business. Its capital stock was two million dollars, divided into four hundred thousand shares of five dollars each. The first directors were B. F. Shoemaker, C. O. White, Sylvester Sullivan, C. L. Vaughan, and F. H. Shoemaker.

The Continental Wireless Telephone and Telegraph Company was incorporated December 23, 1909, under the laws of the territory of Arizona. Its incorporation was for five million dollars, divided into five million shares of one dollar each. The general purpose was to build, maintain, operate wireless and other telephone and telegraph plants, and dispose of telegraph and electrical appliances, transmit intelligence by means of electricity, and do all wireless and other telephone and telegraph business, and to

manufacture and deal in wares and merchandise of every class. The first directors were Sylvester Sullivan, R. E. Clement, Arthur English, G. M. Davis, and C. L. Vaughan.

The Columbia Finance Corporation, a New York company, was incorporated April 19, 1910, with a capital of \$50,000, divided into five hundred shares of one hundred dollars each. Its purpose was to carry on the business of a general broker and securities stocks, and such business as is usually carried on by capitalists, brokers, financiers, commission men and agents, to deal in securities, bonds, and stocks. Its first directors were C. L. Vaughan, George M. Davis and Arthur English.

Considerable evidence has been addressed to the Collins and other patents. As doubtless you may recall, I said during the course of the trial what I now repeat — we are not trying as a substantive proposition the validity of any patents that may have been issued to the defendant Collins. But the evidence concerning the patents issued to him and the allowance thereof is admissible as bearing upon the question of whether or not Collins and the other defendants knew the extent to which such patents granted the right of a monopoly with respect to wireless telephony. In this action the letters of Munn and Company and Prindle and Wright have been admitted. Now the contention of the Government is that Munn and Company limited their opinion with respect to Collins' patent to the use of the Simon speaking arc in sending what were called controlled currents through the earth. Mr. Kinnan testified that the Collins patent referred to in Exhibit 16 as a patent obtained by Messrs. Munn and Company as one covering the fundamental principles for transmitting and receiving articulate speech without connecting wires, did not cover such fundamental principles, and he expressed the opinion that the Collins patent as referred to in the opinion of Messrs. Munn and Company as being a basic one, was basic for the using of the Simon speaking arc in sending control currents through the earth, as stated in the opinion of Munn and Company. He also testified that Collins is not the first man to use an arc for telephonic communications by wireless, in that there had been a publication of those skilled in the art, disclosing a kind of apparatus with inductive coils, where an arc was used, prior to the time of the

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Collins application. Collins, on the other hand, tells you that he applied for patents in 1901, and while such applications were for telegraphic patents, they showed a key in the wire identical with the transmitter, and that it could be used for telephony. He tells you that his patent covered any natural medium, and that, after consultation he believed that after his claims 11, 12, 17, 21 and 22, were allowed, October 6, 1910, by the Patent Office, he was entitled to a monopoly on the rotating discs, and that with his 1906 patent he would have covered everything in wireless telephony. He says that his contention has always been that 814,942 was a basic patent, then based on the only system known, and that the allowed claims of 1908 were for improvements. He explained, too, his views with respect to currents, and the methods and operation of his claimed patented devices. His statement is that he had all methods in mind when he applied for a patent, and he admits that in Philadelphia, in his experiment, he used what has been referred to as a Didell arc, but considered that he had a right to use it in combination, as he says he did. He tells you that he was advised that his patent covered the development of high frequency operation, and that his tests were made with wickets in the ground, or with one in the ground, and the other in the air. He says that the hoop sets such as are in evidence before you were built and used to demonstrate the possibilities of wireless telephony, but that he made no claim of the invention on the system. He says that the Fessenden patent has no relation to his 1906 patents, although it shows like parts for use in telegraphy. He then tells you of his tests made on the Erie ferryboats, where he says he used a combination apparatus, and he has also told you of the experimentation that may have been had upon the warships in the Navy Yard. He refers to the test in July, 1908, on the Singer Building, as one where he used a coil and a receiver and describes the Madison Square Garden test and claims that the electrostatic system used there was covered by his patent which he assigned previously to Chase. He has told you of his test at Chicago, where he used an arc, he says, and in Portland; Maine, where he says that he strictly conformed to the 1906 patent.

Now it is for you to say whether or not Collins in good faith believed that he had the patent rights which he said he believed

he had, and whether, in good faith, he believed in the success and practicability of the devices that he was claiming under his patents.

Now I think I have sufficiently covered so much as may pertain to the charge of conspiracy — the first count of the indictment. The second, third, fourth and fifth counts of the indictment are drawn under a different statute. Bear in mind always a conspiracy means a combination of two or more — one man cannot conspire by himself. But under the third, fourth and fifth counts of the indictment, the charges, while brought against the four individuals, may be considered as justifying the conviction of only one or two or three or four, as you may find the evidence warrants, as hereinafter explained to you.

Here is the statute which I will read to you — Section 215 :

"Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, bank note, paper money, or any obligation or security of the United States, or of any State, Territory, municipality, company, corporation, or person, or anything represented to be or intimated or held out to be such counterfeit or spurious article, or any scheme or artifice to obtain money by or through correspondence, by which is commonly called the 'saw-dust swindle', or 'counterfeit-money fraud', or by dealing or pretending to deal in what is commonly called 'green articles', 'green coin', 'green goods', 'bills', 'paper goods', 'spurious treasury notes', 'United States goods', 'green cigars', or any other names or terms intended to be understood as relating to such counterfeit or spurious articles, shall, for the purpose of executing such scheme or artifice or attempting so to do, place, or cause to be placed, any letter, postal card, package, writing, circular, pamphlet, or advertisement, whether addressed to any person residing within or outside the United States, in any postoffice, or station thereof, or street or other letter box of the United States, or authorized depository for mail matter, to be sent or delivered by the post-office establishment of the United States, or shall take or receive

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any such therefrom, whether mailed within or without the United States, or shall knowingly cause to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such letter, postal card, package, writing circular, pamphlet, or advertisement, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both."

The essence of the second count is that these defendants, Speer, Vaughan and Reall and Collins, had, prior to June 22, 1910, devised a scheme and artifice to defraud the stockholders of the Collins Wireless Telephone Company by inducing stockholders to part from their money including shares in the Collins Wireless Telephone Company, in buying shares of the Continental Wireless Telephone and Telegraph Company, an Arizona corporation, it being charged that the purchasers should act in reliance upon the representations theretofore falsely and fraudulently made by the defendants, and which the defendants knew would not become true regarding the Collins Wireless Telephone Company, to the effect that the shares of the Collins Wireless Telephone Company were a valuable and good investment, and that investments in the stock would give large dividends in a short time; by falsely representing and promising that there was a market development at 100 per cent of the value of the Collins Wireless Telephone Company by consolidating it with three important wireless concerns, forming the Continental Wireless Telephone and Telegraph Company; that the Continental Company had been organized to control and develop wireless telephone and telegraph systems, and had obtained control of the Collins Wireless Company, the Clark Wireless Telegraph and Telephone Company, the Pacific Wireless Telegraph Company, and the Massie Wireless Telegraph Company; that the Continental was in a position to earn money from the start; that its commercial success was assured; that there would be no competition or rate-cutting in the wireless business between the Continental and other wireless companies; that the commercial practicability of the Collins wireless telephone had been thoroughly demonstrated; that the Continental Company intended to put wireless telephony in practical and commercial operation in the near future; that the Clark Wireless Tele-

graph and Telephone Company for five years had conducted a successful business of wireless telegraphy on the Great Lakes; that the business so conducted was commensurate with the enormous commerce of the Great Lakes; and that after April 16, 1908, the Clark Wireless Telegraph and Telephone Company had installed its system on 105 ships owned and operated by the Pittsburgh Steamship Company; that such business was of noteworthy volume; that the Pacific Wireless Telegraph Company was an established, going business, with stations in operation at New York, Philadelphia, Chicago, Milwaukee, Los Angeles, San Francisco, Oakland, Seattle, Port Townsend, Friday Harbor, and Victoria; that the Massie Wireless Telegraph Company had land stations in all important points on the Atlantic Coast; that the stock of the Continental Company which was to be sold belonged to the Continental Wireless Telegraph and Telephone Company and to its treasury; and that the money and property paid in purchase of shares would be received by the company and used for the development of the business; that the stock was being sold by allotments being made by the company; and that the selling price was fixed by the company at an amount to conform to the progress and development of the company; that all of the stock was full paid and non-assessable; and that the company had received in payment for the stock assets to the value of \$5,000,000; that Continental stocks were a most attractive investment, conservative, safe and profitable. It is then charged that the defendants having devised the scheme just described, on June 22, 1910, in order to execute the scheme and artifice, mailed a letter at the New York postoffice addressed to William F. Donohue, 1724 Reed Street, Philadelphia, Pa.

The third count charges that the defendants already named had theretofore devised and intended to devise a scheme and artifice to defraud Minnie Bovender, who has testified in this case, and divers and other persons unknown to the grand jury, of their money, by inducing them to buy shares in the Continental Wireless Telephone and Telegraph Company by falsely representing that the Continental Wireless Telephone and Telegraph Company had been organized to control and operate systems of wireless telephone and telegraph in the United States; that the said

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Continental Wireless Telephone and Telegraph Company had obtained control of the Collins Wireless Telephone Company, the Clark Wireless Telegraph and Telephone Company, the Pacific Wireless Telegraph Company, and the Massie Wireless Telegraph Company, and all the rights and assets of the said companies; that the Continental was in a position to earn money from the start; that there would be no competition or rate-cutting between the Continental Company and other wireless companies; that its usefulness had been demonstrated; that they intended to put the wireless telephone in practical operation in the near future; that the Clark Company had for five years conducted a successful business on the Lakes, and that it had since April 16, 1908, installed its system upon 105 ships owned by the Pittsburg Steamship Company; that the Pacific Wireless Telegraph Company was an established, going concern with stations in the places already named in reference to the second count, and that the Massie Company was a going concern with adequate stations for conducting a wireless telegraph business on the Atlantic coast; that the stock of the Continental belonged to the Continental Wireless Telegraph and Telephone Company, and to its treasury, and that the money received by it would be used to develop its business; that the stock was being sold in allotments; that the company had received in payment for its stock assets to the actual value of \$5,000,000; and that the investment was safe and profitable.

The charge then is that in execution of the scheme just described, on June 23, 1910, the defendants mailed a letter to Minnie Lee Bovender, 150 Center Street, Dallas, Texas.

The fourth count charges that the defendants had devised a scheme and artifice to defraud John Doubrawa, of Milwaukee, and divers other persons unknown to the grand jury, of their money, in the purchase of bonds of the Continental Wireless Telephone and Telegraph Company, by falsely representing that the bonds were issued by the Continental Company for the purpose of raising funds to put in stations, equip steamships, hotels and newspapers, and to extend the business and the development of the telephone and telegraph systems belonging to it. It is charged that part of the scheme was that it was represented that the bonds offered for sale by the Continental were being sold

to persons direct, and that all the money paid by persons in the purchase of bonds would be received by the Continental Company, and used in the development of its business. But in truth and in fact, it is alleged that the defendants intended to divert and intercept for themselves, and to convert to their own use the money paid by persons intended to be defrauded in the purchase of Continental bonds. It is charged that it was further a part of the scheme and artifice to induce persons intended to be defrauded to buy the bonds under the false representation that the intention was that a sinking fund would be provided, to be made up of 25 per cent of the proceeds received by the Continental Company from the sale of its stock during the period that the bonds were outstanding, until the sinking fund should reach \$250,000, the total amount of the bond issue, whereas it is charged that it never was intended by the defendants or the Continental Company that the sinking fund should be established as set forth, nor that there ever was adequate provision made or intended to be made for the payment of the bonds at maturity. It is charged that it was part of the scheme to represent that the Continental Wireless Telephone and Telegraph Company had been organized to control, operate and develop wireless telephone and telegraph systems doing business in America; that it had obtained control of the Collins Wireless Telephone Company, the Clark Wireless Telegraph and Telephone Company, the Pacific Wireless Telegraph Company, and the Massie Wireless Telegraph Company; that the Continental was in a position to earn money by conducting a wireless business from the start; that its commercial success was assured; that there would be no rate-cutting or competition with other companies; that the commercial practicability of the Collins wireless telephone had been thoroughly demonstrated; that the Continental Company intended to put the wireless telephone into practical and commercial operation over an extended field in the near future, and that the Clark Company had for years conducted a successful business, had installed its system upon the ships, operated by the Pittsburg Steamship Company, as heretofore referred to; that the Pacific Wireless Telegraph Company had stations in operation in New York, Philadelphia, and other

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places as heretofore described in the other counts of the indictment; and that the Massie Company had stations at all important points on the Atlantic coast adequate for conducting a wireless telegraph business with ships plying the waters of the Atlantic coast. It is charged then that the defendants, in order to carry out the scheme and artifice just described, did, on the 19th of September, 1910, deliver to the Postoffice at New York a certain letter addressed to Mr. John Dubrawa, Milwaukee, Wisconsin.

The fifth and last count charges that the defendants had, prior to the 17th of September, 1910, devised and intended to devise a scheme and artifice to defraud Mrs. Henry B. Andrews and other persons unknown to the grand jury by inducing them to part with their money in the purchase of the bonds of the Continental Company, by falsely representing that the bonds were issued for the purpose of raising funds to put in stations, equip steamships, and extend the business of the company, and to develop its telephone interests and its telegraph system. It is alleged that part of the representations were that the bonds were being sold by the Continental Wireless Telephone and Telegraph Company direct to purchasers; that the money and all of it would be received by the Continental Company, and used in the development of its business, and that each of the representations just so described was false, and that it was intended by the defendants to intercept and secure for themselves and to convert to their own use the money and property paid by such persons intended to be diverted in the purchase of bonds as described. It is charged that it was further a part of the scheme to induce persons to buy bonds by falsely representing that a sinking fund, adequate to pay the principal of the bonds in two years from the date of their issue would be provided by the setting aside for such sinking fund of 25 per cent of the proceeds received by the Continental Wireless Telephone and Telegraph Company for the sale of its stock, while the bonds were outstanding, until a sinking fund of \$250,000 should be raised, whereas it is alleged that in truth it never was intended to establish the sinking fund as described, nor that adequate provision should be made for the payment of the bonds at maturity. It is charged that it was also a part of the scheme to represent falsely to bond purchasers that the Continental Company had

been organized to control wireless telephone and telegraph systems in America; that it had obtained control of the Collins Wireless Telephone Company, the Clark Wireless Telephone Company, the Pacific Wireless Telegraph Company, and the Massie Company, together with all the rights, patents, titles, stations and assets of the said companies; that the Continental Company was in a position to earn money from the start; that its commercial success was assured; that there would be no competition or rate-cutting; that the commercial practicability of the Collins wireless telephone had been demonstrated; that the Continental Telephone and Telegraph Company would place wireless telephone in practical operation over an extended field in the near future; that the Clark Company for five years had conducted a profitable business in wireless telegraph on the Great Lakes; that after April 16, 1908, the Clark Company had installed its system upon 105 vessels owned by the Pittsburg Company, and as already described in the preceding counts, which I have summarized in statement 2. It is charged that it was represented that the business of the Clark Company was of noteworthy volume; that the Pacific Wireless Telegraph Company was a going established concern with stations in operation at New York, Chicago, Milwaukee, Los Angeles, San Francisco, and other places already referred to, and that the Massie Company had important stations along the Atlantic coast, adequate to carry on a wireless telegraph business with ships plying in the waters along this coast. It is then alleged that to carry out this scheme and artifice as described, the defendants, on the 17th of September, 1910, mailed a letter at the Post Office in New York addressed to Mrs. H. B. Andrews, 225 South Washington Street, Whittier, California.

(The fourth and fifth counts, gentlemen, are quite easily distinguishable because they refer to bonds of the Continental Wireless Telephone and Telegraph Company.)

Now this charge is of entering into a scheme or artifice to defraud, intending to use the mails of the United States in effecting it. A scheme would be the formulating of a plan. An artifice is a suggestion of a wrongful action or deceit or trickery, while to defraud one would mean to deprive one of his money or property, and, as has been well said by a judge in trying a case of

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this character, when the words of the statute are put together, the plain meaning is that the charge is that it is wrongful to obtain money or property of another through the use of the United States mails. Now the purpose of enacting this statute that I have read to you was to prevent the mails of the United States from being used in the promotion of fraudulent schemes or transactions. Doubtless experience showed to Congress that efforts to accumulate wealth through schemes and artifices were of such a character and number as to call for legislation calculated to protect the innocent reading public. Now the question of fact for you to determine is, — Was a scheme devised by these defendants or any of them to defraud the public through the use of the mails, in the selling of stock by the defendants or some of them within three years before the finding of this indictment, the indictment having been presented July 31, 1912, which would carry us back to July 31, 1909. Were the mails of the United States in fact used within that period in the endeavor on the part of the defendants or any of them to effect the scheme, and was it to be effected in the Southern District of New York? It does not matter that the mails were to be used in other federal districts of the United States, provided the mails of the United States within the Southern District of New York were to be used to carry out the scheme alleged in the indictment, provided there was any such scheme.

Gentlemen, I have already taken somewhat longer than I intended to. My purpose was to try and aid you in the separation of the first count from the subsequent counts and call your attention to the fact that the last two counts refer to bonds and the preceding two to stock; the first to conspiracy; the last four referring to an alleged scheme and artifice to defraud.

I have already touched on the question of good faith and have told you that it was necessary for the Government to establish, of course, that the defendants intended to do the acts charged in the indictment. If you believe they were acting in good faith they are entitled to acquittal, or such of them as you may believe acted in good faith would be entitled to acquittal. You will remember that Section 215, under which the last four counts of the indictment are drawn, relates to the use of the United States mails to defraud, but it is not necessary to prove that any one was actually defrauded.

It is not necessary to prove that the defendants or any of them gained or profited or intended to profit thereby. If the defendants intended to defraud persons specified in the indictment in the manner therein set forth and deposited or caused to be deposited the letter or letters therein specified to effect that purpose, you will be justified in finding them or such of them as participated therein guilty of this offense. The important element in this offense is the intent which the defendants or any of them had. Provided, always, that the other elements I have described are proven to your satisfaction.

I think it proper to make reference — if I have not already done so, to the attitude of the defendant Reall. Reall, you will remember, was in no official corporate position in any of the several corporations that have been referred to. But there is evidence tending to show that he wrote letters and acted in matters of more or less importance, and was more or less intimately associated with the affairs of the Collins Company in New York. You have heard various letters read, some written to Reall from Sullivan, from Seattle, and particularly one written by Reall to Speer at Missoula, Montana, in 1909. Now, consider these, together with all the evidence bearing upon the position that Reall may have occupied. Was he merely acting in a clerical capacity, not exercising any judgment, perhaps of his own, or was he taking upon himself sufficient authority to justify the belief that he knew of the alleged unlawful combination charged in the first count of the indictment, or of any of the alleged schemes or artifices charged in the other counts of the indictment. What was his part with relation to the Blue Book? Did he intend to aid in deception, if any there was, of persons who might be induced to buy stock.

You should consider all the literature and the pamphlets and leaflets which were sent out. Take the Blue Book. Was it intended to induce persons into false beliefs in the safety of an investment in the stock or concerning the facts set forth in the Blue Book? And so the Red Book? Was that honestly put out, or was that part of a combination as described, or was it in execution of a scheme to defraud? What was the meaning of the advertisement of the sales of electrical instruments? What was the meaning of the history of the experiments made by

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Collins, as published in the literature? Did the literature set forth accurately or inaccurately the apparatus that they were making? And had the tests been satisfactory, or were they fraudulently represented for the purpose of selling stock?

In the first count (which is the conspiracy charge), you may find that two or more of the defendants are guilty, provided you are satisfied the evidence justifies such a conclusion. Inasmuch as that charge alleges a combination between two or more, there must be of course a conviction of at least two, provided any conviction is justified at all. But under the other counts which charge a scheme and artifice to defraud by the use of the mails, there may be a conviction of only one of the defendants, provided you believe from the evidence that the evidence fully satisfies you of the guilt of one, or you may convict two or three or four as you may be satisfied. But, as already described, there can be no conviction under the second, third, fourth or fifth counts unless you find that there has been a scheme devised by one or more of the defendants to cheat and defraud by the use of the mails as described in these several counts.

You will recall that a number of people were sworn as witnesses who stated that they had bought shares of stock in the Collins Company. You will remember there was a man from West Virginia, and one from Wyoming, and one from Oklahoma, and one from Pittsburg, and a girl stenographer from Texas, and a woman from Whittier, California, and I think a colored woman from Cleveland, Ohio; then there was a woman in Oklahoma who bought bonds, and a man from New Jersey who bought stock and bonds. You will also recall that there were some letters written by some stockholders who wanted explanations concerning the surrender of stock and some answers were written. Consider all this evidence, whether the answers made to the inquiries were fair and honest statements.

Whatever your findings may be, you will, by your foreman, present them to the Court; and, as I have said, you may convict two, or three, or all four; or you may acquit one or all, as the evidence will warrant.

My attention is called by counsel for defendants Vaughan and Speer to the fact as he contends that there is no evidence that the

defendants or any of them employed any "crooks" to sell stock in Boston. That evidently refers, possibly, to some statement made by the District Attorney. Of course counsel in arguing may have characterized individuals or actions in terms that you may not agree with. You will take the case and analyze the evidence and reach your own independent conclusion.

My attention is also invited by counsel for Mr. Collins to the fact that I omitted to tell the jury they should consider the opinion of Messrs. Prindle & Wright, that they might have given to the defendant Collins or Speer or any of the defendants I think I mentioned these letters; of course I intended to. They are in evidence and you may consider it along with the letters — other letters in evidence.

I think I have covered the principal facts of the law in the case as applicable and counsel may make any suggestions as to omissions and errors of statement — I shall be glad to have my attention called to them.

MR. WISE: I think I may say that the jury has a right to call for any and all of the exhibits if they need them, or a copy of the indictment.

THE COURT: Generally speaking the Court gives to the jurors the indictment — nothing more. When they go to their deliberations they may call for anything that has been introduced in evidence and you will so understand it. You may take the case with the indictment and if in your deliberations you want any papers send for them and they will be transmitted to your jury room.

FORM NO. 65

Charge to Jury — Using Mails to Defraud.

Grey v. United States, 172 Fed. 101 (C. C. A. 7th Cir.).

HON. K. M. LANDIS, DISTRICT JUDGE.

Gentlemen of the Jury: At the outset of what I have to say to you, I desire to give expression to that sense of satisfaction which I feel over the diligence which has characterized your attention to the business which brought you to this court room. Under our system your office equals, if it does not excel in responsibility

and dignity, that of any other office however exalted under our system of government; because, to your determination is left the final word of the guilt or innocence of persons charged with crime. You come here from the great body of the citizenship of Northern Illinois in obedience to the command of the government authority, the United States, leaving your homes and your business, and you do it at great discomfort and necessary sacrifice.

It is a sad commentary upon the law of the United States that jurors are obliged to render this service without even being reimbursed by the government for their actual necessary expenses. And so you have my thanks in addition to my appreciation and the appreciation of all good citizens for the just performance of your duties, and for the proper discharge of your responsibility.

We know of no better way of determining controverted questions of fact than by vote of the twelve men in the jury box, selected from the mass of citizens, fairly representative of the intelligence and integrity and morality of the community. After the twelve men have sat through the trial of a case, heard the evidence of the witnesses, the arguments of counsel, the statement from the bench of the law of the case and counsel, together in their jury room — of honest men seeking only to answer the question: What is the truth of the controversy respecting which the various witnesses have testified — I say to you, gentlemen, you now discharge a duty in conformity with an obligation imposed by a system which is the nearest approach to perfection for the determination of controversies of fact that we know anything about.

Now, in this case, there are considerations that I conceive it to be my duty to call to your attention specifically, which, bearing in mind that your purpose as my purpose is to proceed to a finality with the business on hand, with complete impartiality. I feel I should call your attention to certain considerations with a view of eliminating from the situation what in the esteem of the court is in the nature of chaff, that is not calculated to illumine your pathway as you proceed with your considerations.

There are various sentimental considerations that have gotten into this case inevitably — couldn't be kept out. It is against

these considerations that I conceive it to be my duty to utter to you, gentlemen, a word of admonition.

This defendant, as all defendants, men and women, stands before you and the bar of this court to have under this indictment this defendant's conduct measured up alongside the statute of the United States, with a view to determining the question whether her conduct is an infraction of the law. And in this court all men and all women, and men and women, stand on an absolute equality.

I cannot put it more clearly to you than to say to you, if on the evidence in this case you would find the defendant guilty of this charge, were the defendant a man, then your verdict in this case must be against this defendant.

The law in terms does not exclude women. It does not enact that whoever, not being a woman, conceives a scheme or artifice to defraud — the law is general in its terms and applies to all men and all women, and must receive when the test comes at the hands of jurors and courts, an impartial enforcement, if there is to be any permanency in law, against all persons alike.

The charge in this case is that this defendant conceived a scheme or artifice to defraud; that the scheme was in substance proposed to obtain the money of certain kinds of people fraudulently, that is to say, by falsely representing to people that the defendant would do for those people certain things — the representation falsely made, as charged, being to induce those people to send to this defendant the money — the fee fixed by her as the fee to join this so-called Searchlight Club.

The charge is that the defendant conceived this scheme, not intending to carry out and make good the representation to which she gave expression to these various people by advertisement and otherwise. And the charge of the government is the evidence introduced on behalf of the government, is in substance that in furtherance of this scheme which is charged, involved the use of the mails of the United States in its execution, the defendant first caused to be inserted in a newspaper or newspapers an advertisement: "Middle aged widow, good looking, wealthy, tired of single life, would correspond with gentleman: object matrimony. Box 104, Elgin, Illinois."

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And again: "Retired business man, wealthy but lonesome, wishes to correspond; view matrimony; no objection to poor woman. Box 94, Elgin, Illinois."

That in reply to that advertisement inquiries came to these post office boxes from the persons named who have testified; that in reply to those inquiries the letter was sent out to the inquirers by this defendant under the name of the Searchlight Club, as follows, being varied according to the sex of the person to whom it was addressed;

"Your valued favor of recent date received, and in reply would beg leave to explain the ad. which you answered. We have a lady client who requested us to find for her a loving life companion; and with that object in view we immediately advertised for her and received replies from several others besides yourself. We have shown all those letters to the lady in question, and she has selected yours as the one with which she was most favorably impressed, and has asked us to send you her full description and photo, omitting her name and address.

"We shall consider it a great favor if you will return this photo as we wish to keep it on file in our offices. She is a woman of a loving and gentle disposition. We think she is good looking, but as tastes differ, we let the enclosed picture tell its own story.

"She is most desirous to find at once a good, moral upright husband, and one who would help her with her business cares. Our client is making arrangements for a business trip that would take her to your immediate vicinity shortly; so, if you wish to be introduced, and desire a personal acquaintance with the lady, fill out the description blank on the other side, omitting answers to questions that you would prefer to answer in person, and return same to us, with our fee, five dollars, which is positively our only charge, and we will at once furnish you with the desired information.

"We think you will be well pleased with our method of conducting this affair, as it will be possible to arrange for a personal meeting without any cost to you. If you cannot come to an understanding with this particular lady, we have a great many other wealthy members of all ages, description and nationalities enrolled upon our books, equally as desirable with whom we would

be pleased to place you in communication, as we shall continue introducing you without further charge until we have found you a suitable wife.

"As we have been in this business for a great length of time, our reliability is unquestioned. Our methods have been investigated, and found to be reliable and satisfactory, and will bear the closest scrutiny.

"We have a great many imitators, but wish to state we have no connection with any other concern of this kind, and never did have.

"We trust that you will enroll immediately as a member, and permit us to introduce you to the lady whose photo is enclosed; and remember, if this lady does not suit you, we agree to secure for you a wealthy loving companion.

"Hoping you realize the importance of an immediate decision, and that you will grasp the opportunity we offer, we remain,

Respectfully, etc.,

THE SEARCHLIGHT CLUB,

Per MARION GREY, *Manager*.

"P.S. — Please do not ask us to place you in communication with any of our clients unless you join this association, and send us the necessary membership fee, as we positively will not do so, for we cannot furnish the names of our clients to any but members."

On the back of that letter is a printed application blank which, as per instructions on the face, is to be filled out by the individual to whom it was sent in reply to the inquiry. I will not take your time to read that through except that I will only call your attention to the fact that you are to consider it when you get into your jury room in connection with all the other correspondence introduced in the case, and all the evidence that you have heard from the stand.

Attached to that letter which went to the individual inquiring about the advertisement, was a description — a purported description of the alleged woman referred to in this letter.

"This is a description of the lady whose photograph is enclosed. Name..... will not be given to you until you become a member. Age — 36. Height, 5 feet 8. Weight — 135.

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What is the color of your hair — dark. Eyes — gray. Complexion — fair."

I feel here, gentlemen, that I ought to ask you not to become nauseated in the discharge of your duties by this sickening drivel, nor to allow your abhorrence to the occupation that this defendant concededly was engaged in, to drive you to give an expression of your feeling by a verdict of guilty, simply to register your condemnation of such matters. You cannot find her guilty unless this indictment has been proved; that what she has done here was done by her with a fraudulent intent.

"What is the color of your hair — Dark. What is your nationality — American. Religion — Golden Rule. Would you refuse if otherwise suited to marry one of different religion than your own — No. What is your occupation — Income — three thousand dollars. Have you a common school or college education — College. Are you accomplished in music — Some. Form — Good. Are you crippled or deformed — No. What is the value of your property, both real and personal — \$38,000. What amount do you expect to inherit — Some. Were you ever married — Yes. If so, have you any children — No. Were you ever divorced — By death. What is your disposition — Even. Do you use tobacco or alcoholic drinks — No. Do you dress stylish or plain — Well. Are you considered handsome or plain — Do you care for society — No. Are you fond of children — Yes. Are you healthy — Yes. Do you prefer city or country life — City."

This is the description of the so-called or alleged wealthy woman: "Middle aged widow, good looking, wealthy, tired of single life", who had placed herself in the hands of this defendant according to this representation sent to the inquirer — placed herself in the hands of this defendant to be disposed of by this defendant matrimonially. Attached to this description was this photograph.

You will observe that the prime consideration running through this whole business is the consideration of money, beginning with the advertisement and carried on into the correspondence including the description.

And while it is for you ultimately to determine these facts

without any control from the bench, whose responsibility ceases with an exposition of the rules of law, I feel that it is my duty to call your attention to that consideration as having been prominent in the mind of the defendant, and those who replied to the defendant, as expressed in the documentary evidence introduced in this case.

(Addressing Mr. Shirer.) Have you any other of this forming a set of these tickets?

MR. SHIRER: Yes, your Honor, the membership tickets.

THE COURT: In connection with this enterprise a membership ticket was issued by the Searchlight Club — this defendant — in substance as follows: This is after the subscriber received this letter; sending to the Searchlight Club, this defendant, the five dollar fee, dated July 6, 1907.

"Membership ticket, Searchlight Club, Elgin, Ill., No. 2096.

This ticket entitled the holder thereof to introductions to the members of the Searchlight Club as long as he wishes the services of said club. Special instructions will be given at any time when ticket is returned and request made.

The ticket will receive no attention unless postage is enclosed. If the ticket is lost, we will not be responsible.

Issued to William Greble,

Mo."

In connection with determining the question of whether or not the charge in the indictment — the purpose of this defendant was to fraudulently obtain the money of persons, or whether, as she claims, in opposition to the charge, her purpose was to conduct in good faith a matrimonial bureau at Elgin for the purpose of bringing together and matching up persons who should become members of her club, you will take into consideration all this documentary evidence, the evidence of all the witnesses on that subject, including what was done as shown by the evidence by the defendant, or under her instructions or by her direction in connection with the sending out of this literature — the insertion of advertisements, and the extent to which that was done.

It is in evidence — and it is important, in determining the question of good faith — especially bearing in mind the statement in this letter that the wealthy widow who wanted a husband and

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was particularly attracted by the man to whom the communication was sent after an inspection of quite a number of replies — to bear in mind the statement in this letter that this wealthy widow, whose photograph was enclosed, would shortly visit the neighborhood where the man to whom that letter was sent resided, going there on business, at which time the man to whom this letter was sent would have an opportunity to be introduced to this wealthy widow; the evidence being in that connection that at times a great many of these same photographs were sent out by this defendant at the same time to different parts of the United States, containing the statement that the original of this photograph would shortly visit the locality where the addressee of the letter resided, on business.

In connection with this correspondence was a sheet of paper headed "A few testimonials." Now I am not going to read those testimonials to you. They are exceedingly silly, and I won't take my time or your time here by reading them through. But do not find this defendant guilty of the charge of the indictment simply because of your contempt for this kind of stuff.

The only thing in connection with this testimonial that I desire to invite your attention to is this, as going to the question of the defendant's good faith as stated by the defendant on the stand — these testimonials which appear on the face of this sheet to be addressed to the Searchlight Club, expressing to the Searchlight Club the alleged writer's appreciation of the Searchlight Club's services in procuring for the said writer a husband or wife — were not addressed to the Searchlight Club, but, as stated by this defendant, were addressed to the Fireside Club, another institution which had embarked upon the enterprise of mercenary match-making in St. Joseph, Michigan, which this defendant brought from that institution when it closed up some weeks prior to the opening of the institution in Elgin and thereafter sent out in the prosecution of her business in Elgin, changing the address of the Fireside Club and substituting for it The Searchlight Club.

It is, I say, for your consideration primarily — the question of whether or not the defendant's purpose was to get the money by representing to these people she would do something which

she did not intend to do, or whether her purpose was to conduct a legitimate business, giving these various persons what she promised to give these various persons in consideration of their paying to her a \$5.00 fee.

Now, in that connection, there is one circumstance that will facilitate, in the opinion of the court, your discharge of your duty in answering the question of whether it was good faith or bad faith, whether it was to run an open and above-board business, or whether it was to get money by fraud, by false representations. The middle-aged widow, good-looking and wealthy, who was advertised in a great many papers, the defendant has failed to name to you in any way that would enable an investigation to locate and identify her.

You will take into consideration, in determining the question of whether there was any such person, the testimony of the defendant which, in substance, as the court recalls it, is, she can't recall definitely the name of the middle-aged widow; but that she was under the impression that her name was Klein, and that she lived in Nebraska — possibly at Omaha. But beyond that she could give no definite information.

In determining the question of whether or not this was a fraud or a business in good faith, you will take into consideration the testimony here respecting "Retired business man, wealthy but lonesome, who wishes to correspond with a view to matrimony, and who had no objection to a poor woman." The failure to produce him or to name him, although this advertisement appeared in a great many newspapers, and although there was much correspondence with subsequent inquiries respecting this retired business man — the failure to produce him or to give to you his name — and a statement of where he lived, is to be considered by you in determining the question of whether there was any retired business man whom this defendant was to place in communication at the retired business man's request with a view to matrimony.

All these things go to the question of good faith.

The defendant has testified in accordance with the — in the exercise of the right which the law, in its humanity, gives to a defendant, which it used, in its barbarity, to deny to a defendant; the defendant has testified that her intent was to

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conduct in good faith a square business, not intending to get anybody's money dishonestly, not intending to get anybody's money by false representations or statements which she did not at the time intend to make good. She stated that in this witness chair, under the sanction of an oath; and you, gentlemen, will not overlook that testimony, but you will consider that testimony, because the intent is the gist of this whole charge. If her intent was good, she is entitled to go out of this court room with a verdict of "not guilty." If her intent was bad, then your verdict must of necessity be "guilty."

Now, on this question of intent, it is no defense to a wrong-
ful act knowingly and intentionally committed, that the intent
was innocent.

Your practical experience and daily observation of the acts and intentions of men and women will materially aid you in determining this question of intent. The purpose with which the act is done is more often more clearly and conclusively shown by the act itself than by any subsequent words or explanations of the actor. Thus, if you found a stranger leading your horse saddled and bridled from your barn at night without your permission, and he should tell you that he did not intend to steal your horse, but was simply taking him out for exercise, you would undoubtedly infer his intent from his conduct rather than from his spoken word.

If you find a stranger kindling a fire in your hay or in your barn, and he should explain to you that he did not intend to burn your hay or your barn, but was simply building a little fire to burn a little hay whereby to warm his hands, you would probably judge his intent from his act rather than his explanation.

So in the case before you, you will not overlook the defendant's explanation of what her purpose was in the several phases that go to make up this case, any more than you will overlook the facts themselves, beginning with the advertisement and ending with the last act or deed in the month of September at the time the business closed.

Now, gentlemen, this indictment means nothing against this defendant. It is a mere formality as far as the question of her guilt or innocence is concerned. It does not even cast upon this

defendant a faint shadow of a suspicion of misconduct. It is the instrumentality which the law has chosen to bring the defendant to trial; and although it was voted by a grand jury, that grand jury acted in the absence of this defendant, upon evidence which she knew nothing about at the time, and given by witnesses which neither she nor her counsel had a chance to cross-examine. It means nothing.

On the contrary, when you gentlemen took your oaths to try this case as honest men, the law presumed this defendant, as she stood before you and expressed her plea of "Not guilty" just as innocent as any woman in the court room or any woman out of the court room.

The business began with the taking of the seat by the first witness, and unless and until by evidence which establishes the defendant's guilt beyond a reasonable doubt, the facts in support of the indictment are established — and this presumption abides with the defendant through the case as an armor which can only be pierced by evidence with the existence of which innocence is inconsistent.

Now, what is meant by "reasonable doubt"? By "reasonable doubt" is not meant that condition of mind that a person seeking a way out for somebody charged with crime would get himself into in an endeavor to evolve or imagine an excuse. That is not reasonable doubt, because it would not be based on reason.

Reasonable doubt, to quote the words of a high judicial authority — "Reasonable doubt is a question of common sense and reason, and cannot be ascertained by any artificial rule or definition. Evidence cannot be weighed with the nicety and certainty with which coin and bullion are weighed at the mint."

You are charged that the law presumes the defendant innocent until proven guilty beyond a reasonable doubt; that if you can reconcile the evidence before you upon any reasonable hypothesis consistent with the defendant's innocence you should do so, and in that case find the defendant not guilty.

You are instructed that you cannot find the defendant guilty unless from all the evidence you do believe her to be guilty beyond a reasonable doubt.

You are further charged that a reasonable doubt is a doubt

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based on reason, and which is reasonable in view of all the evidence; and if after an impartial comparison and consideration of all the evidence, you can conscientiously say you are not satisfied of the defendant's guilt, then you have a reasonable doubt.

But if after such impartial comparison and consideration of all the evidence you can truthfully say that you have an abiding conviction of the defendant's guilt, such as you would be willing to act upon in the more weighty and important matters relating to your own affairs, then you have no reasonable doubt.

In determining this question of good faith and the defendant's intent, you will take into consideration the testimony of the witnesses who came here and spoke as to her reputation — witnesses from Michigan and witnesses from Elgin. That evidence is important always in a case where there is a nice conflict between the other evidence in the case respecting the point in dispute. If there is a sharp conflict and a close conflict, or if there is, as I might say, a fair division of evidence for and against a proposition under inquiry by a jury, and in support of the evidence in favor of the defendant's side of that question — good people in fair number appear and testify to that defendant's good reputation, that testimony is to be considered in determining the question upon which side of that controversy is the truth.

What the court has said to you, gentlemen, on the question of the facts, has been for the sole purpose of enabling you gentlemen and assisting you gentlemen to arrive at a proper solution of the problem committed to your charge. The determination of the facts the law has wisely committed to you ultimately, absolutely free from any interference or control from this bench. Your verdict must be your judgment, and not mine.

If what the court has said about the facts is not consistent with your recollection of what the witnesses have testified to, go by your recollection and don't go by mine. But the law does impose upon you the obligation of taking from me the law in this case; that under your oaths you are required to do even though you may think I have not correctly stated the law, or though you may think that the law should be otherwise. You sit here, as the court sits here, to enforce the law as we find it, and not to change it as we would like to have it.

Gentlemen of the Jury, you will take with you several forms of verdict. The indictment is in three counts, each count charging a specific offense. The form of your verdict will be, if you find the defendant guilty on all three counts, "We, the jury, find the defendant, Marion Grey, guilty as charged in the indictment."

If you find the defendant not guilty on all of these three counts, the form of your verdict will be, "We, the jury, find the defendant not guilty."

If you find a verdict of guilt as to some count or counts, and not guilty as to another count or counts, the form of your verdict will be, "We, the jury, find the defendant, Marion Grey, guilty as charged in the count or counts of the indictment, and not guilty as charged in the other count or counts," as your conclusions may be.

You have nothing to do with the fixing by your verdict of a punishment in the event of a verdict of guilty. Wisely or unwisely, the law has permitted the discharge of that responsibility to the court; and you gentlemen in the discharge of your duties will proceed without regard to the question of punishment that may be imposed in the event of a verdict of guilty, trusting to the court in that event for a sane and just discharge of his duty.

I send the indictment with you solely to enable you to see from the inspection of it, in case you should find a verdict on one or another count different from the verdict on the other counts, the numbers of the counts you are considering and voting.

You understand that this indictment, as I said in my charge, is not to be considered by you as even remotely tending to establish anything against the defendant.

FORM NO. 66

Indictment — Using Mails to Defraud.

Grey v. United States, 172 Fed. 101 (C. C. A. 7th Circ.).

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA,
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION.

Of the October Adjourned Term, in the year of our Lord nineteen
hundred and seven.

INDICTMENT — USING THE MAILS TO DEFRAUD [FORM 66

Northern District of Illinois, }
Eastern Division. } sct.

1. The grand jurors for the United States of America, inquiring for the Eastern Division of the Northern District of Illinois, upon their oaths present that one MARION GREY, late of the City of Elgin, in the division and district aforesaid, before and at the several times of the committing of the several offenses hereinafter mentioned, at Elgin aforesaid, in the division and district aforesaid, had devised a scheme and artifice to defraud one John B. Peckett, then resident at Bradford, in the State of Vermont, one William Grable, then resident at Dearborn, in the State of Missouri, one Minnie Coleman, then resident at Milwaukee, in the State of Wisconsin, and a class of persons then resident within the said United States not capable of being resolved into individuals, and not capable, by reason of their great number, and by reason of a want of information on the part of the said grand jurors, of being all named in this indictment, that is to say, such of the persons being desirous of marrying as should make answer to certain advertisements inserted and to be inserted and to be caused to be inserted by her, the said Marion Grey, in divers newspapers and public prints throughout the said United States of the kind and character and to the effect following, to wit:

MIDDLE-AGED widow, good looking, wealthy, tired of single life, would correspond with gentleman. Object matrimony. Box 104, Elgin, Ill.

RETired business man, wealthy, but lonesome, wishes to correspond. View matrimony. No objection to poor woman. Box 94, Elgin, Ill.;

which said scheme and artifice was a scheme and artifice which the said Marion Grey then had devised to defraud the said persons so intended to be defrauded as aforesaid by inserting and causing to be inserted in divers newspapers and public prints in different parts of the said United States fictitious and pretended advertisements of the kind and character above set forth; by causing the letters, correspondence and communications answering and replying to said advertisements, and inquiring about the same,

to be sent and delivered to her, the said Marion Grey, at Elgin aforesaid; by replying to said last-mentioned letters, correspondence and communications; by falsely representing and pretending to the said persons so intended to be defrauded respectively, by and through correspondence, that she, the said Marion Grey, under the name and style of The Searchlight Club, was conducting and carrying on at Elgin aforesaid a fair, honest and *bona fide* matrimonial agency; that she, the said Marion Grey, under the said name and style, had numerous wealthy, lady and gentleman clients who respectively had requested her to find for them loving life companions; that the said The Searchlight Club had a great many wealthy members of all ages, descriptions and nationalities enrolled upon its books; that if the said persons so intended to be defrauded respectively would pay her, the said Marion Grey, under the said name and style, a fee of Five Dollars, she, the said Marion Grey, under the said name and style, would place them respectively in communication with such wealthy members of said club (men or women as the case might be) and would continue introducing them respectively to wealthy members of said club (men or women as the case might be) without further charge until she, the said Marion Grey, under said name and style, had found for them respectively suitable husbands or wives (as the case might be); by sending to the said persons so intended to be defrauded respectively false and fictitious testimonials commending and praising the pretended results accomplished, and the pretended work done, by the said Club in furnishing men with wealthy wives and women with wealthy husbands; by sending to said persons respectively false and fictitious reports and particulars of and concerning pretended registrations to be pretended to be taken from the files of said club and to be pretended to give a description of, and the wealth of, wealthy ladies and gentlemen who (it was to be pretended) had registered their names in said club as members of said club and enrolled themselves as such members; by falsely representing and pretending to said persons so intended to be defrauded respectively that she, the said Marion Grey, under the said name and style, had lady or gentlemen clients (as the case might be) who respectively had seen the letters of the said persons so intended to be defrauded respectively and who

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respectively were favorably impressed with said persons so intended to be defrauded respectively and who respectively were about to take business trips that would take them to the immediate vicinity of the said persons so intended to be defrauded respectively and that would offer opportunities respectively for introduction and acquaintance; and by falsely representing and pretending to said persons so intended to be defrauded respectively, that she, the said Marion Grey, under the said name and style, would secure for the said persons so intended to be defrauded respectively wealthy and loving companions, if they, the said persons respectively, would pay her, the said Marion Grey, under the said name and style, a fee of Five Dollars and would enroll themselves respectively as members of the said club and would register their names, applications and descriptions with said club; whereas in truth and in fact, as the said grand jurors charge the facts to be, at the time of the devising of the said scheme and artifice, at the several times of the making of the said several false representations, and at the several times of the committing of the several offenses hereafter in this indictment set forth, as the said Marion Grey at all of the said times well knew, she, the said Marion Grey, under the name and style of The Searchlight Club, or under any other name, was not conducting and carrying on at Elgin aforesaid or elsewhere a fair, honest and *bona fide* matrimonial agency; and she, the said Marion Grey, under the said name and style, or under any other name and style, did not have numerous wealthy, lady and gentlemen clients, who respectively had requested her to find for them loving life companions; and the said The Searchlight Club did not have a great many wealthy members of all ages, descriptions and nationalities enrolled upon its books, and did not have any wealthy members of any kind enrolled upon its books, or desiring to secure husbands or wives (as the case might be); and if the said persons so intended to be defrauded respectively would pay the said Marion Grey, under said name and style, or under any name or style, a fee of Five Dollars, she, the said Marion Grey, under the said name and style, or under any other name, would not place them respectively in communication with wealthy members of said club (men or women as the case might be) and would not continue introducing

them respectively to wealthy members of said club (men or women as the case might be) without further charge until she, the said Marion Grey, under the said name and style, or under any other name, had found for them respectively suitable husbands or wives (as the case might be), and the said Marion Grey, under the said name and style, or under any other name, would not, and intended not to, introduce the said persons so intended to be defrauded respectively to, or place them in communication with, any wealthy persons of the opposite sex desiring marriage, and she, the said Marion Grey, did not intend to, and would not, find and secure wealthy husbands or wives (as the case might be) for the said persons so intended to be defrauded; and the said club had not done or accomplished anything at all in furnishing men with wealthy wives or women with wealthy husbands; and no wealthy men desiring to secure wives and no wealthy women desiring to secure husbands had registered their names with said club as members of said club or enrolled themselves as members of said club; and she, the said Marion Grey, under the said name and style, did not have lady or gentlemen clients (as the case might be) who respectively had seen the letters of the said persons so intended to be defrauded respectively and who respectively were about to take business trips, or any kind of trips, that would take them to the immediate vicinity of the said persons so intended to be defrauded respectively and that would afford opportunities respectively for introduction and acquaintance; and she, the said Marion Grey, under the said name and style, or under any name, would not secure, and intended not to secure, for the said persons so intended to be defrauded respectively, or for any of them, wealthy and loving companions. And the grand jurors aforesaid, upon their oaths aforesaid, do further present that the said Marion Grey intended, by the means aforesaid, to induce and procure the said persons so intended to be defrauded respectively to send and pay to her, the said Marion Grey, under the said name and style, the sum of Five Dollars as a fee as aforesaid and thereby to get possession of the moneys arising from the collection of said fees and thereupon, that is to say, upon getting possession of said moneys, to convert said moneys to the own use of her, the said Marion Grey, without

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rendering to said persons therefor such services as she falsely represented and pretended as aforesaid that she would render to them, and without rendering to said persons any thing or service of value therefor, and thereby to defraud those said persons of the same moneys; which said scheme and artifice was a scheme and artifice which the said Marion Grey, when devising the same and committing the several offenses hereafter in this indictment mentioned, intended to effect, and which said scheme and artifice then and there was a scheme and artifice to be effected, by inciting, by means of said advertisements, the said persons so intended to be defrauded as aforesaid to open communication with her, the said Marion Grey, under the respective styles "Box 104, Elgin, Ill." and "Box 94, Elgin, Ill.", by means of the post office establishment of the said United States, and by thereupon (that is to say when the said persons had opened communication with her, the said Marion Grey, under the said style) opening correspondence and communication with those persons respectively under the name and style of The Searchlight Club, per Marion Grey Mgr., by means of the post office establishment of the said United States. And the grand jurors aforesaid, upon their oaths aforesaid, do further present that the said Marion Grey, on the eighth day of August, in the year of our Lord nineteen hundred and seven, at Elgin aforesaid, in the division and district aforesaid, so having devised the said scheme and artifice to defraud, in and for executing the same scheme and artifice, and in and for attempting so to do, and in and for defrauding by and through the said scheme and artifice the said John P. Peckett, then resident at Bradford, in the State of Vermont, who was one of the said persons so intended to be defrauded as aforesaid by and through the said scheme and artifice as aforesaid, unlawfully, willfully and fraudulently did place in the post office of the said United States at Elgin aforesaid, and cause to be placed in that post office, to be sent and delivered by the said post office establishment to the said John B. Peckett, at Bradford aforesaid, a certain letter, to wit, a letter of the tenor which here follows, to wit:

(Note : This indictment is most unique in legal literature and illustrates the credulity of human nature.)

THE SEARCHLIGHT CLUB

LOCK Box 94

We court the most thorough and strict investigation, through banks, business houses, or members who have dealt with us.

We have upon our lists good, substantial honest people — the very best the country produces. We can please you as to any rank, religion or nationality (except colored people and chineses.)

We are your friends. We make your interest our own. Every transaction strictly confidential and we promise that under no conceivable circumstances will we reveal any information to anyone concerning a customer without their consent.

ELGIN, Ill.,
August 8, 1907.

.....,
Bradford, Vt.

DEAR SIR:—

Your valued favor of recent date received and in reply would beg leave to explain the "ad" which you answered.

We have a lady client who requested us to find her a loving life companion, and with that object in view we immediately advertised for her, and received replies from several others besides yourself. We have shown all those letters to the lady in question and she has selected yours as the one with which she was most favorably impressed and has asked us to send you her full description and photo, omitting her name and address. We shall consider it a great favor if you will return this photo, as we wish to keep it on file in our office. She is a woman of loving and gentle disposition. We think she is good looking, but as tastes differ we let the enclosed picture tell its own story.

She is most desirous of finding at once a good, moral, upright husband, and one who would help her with her business cares. Our client is making arrangements for a business trip that would take her to your immediate vicinity shortly, so if you wish to be introduced and desire a personal acquaintance with the lady,

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fill out the description blank on the other side, omitting answers to questions that you would prefer to answer in person, return same to us with our fee, \$5.00, which is positively our only charge, and we will at once furnish you with the desired information. We think you will be well pleased with our method of conducting this affair, as it will be possible to arrange for a personal meeting without any cost to you.

If you cannot come to an understanding with this particular lady we have a great many other wealthy members of all ages, descriptions and nationalities enrolled upon our books equally as desirable, with whom we would be pleased to place you in communication, as we shall continue introducing you without further charge until we have found for you a suitable wife.

As we have been in this business for a great length of time our reliability is unquestioned. Our methods have been investigated and found to be reliable and satisfactory, and will bear the closest scrutiny. We have a great many imitators, but wish to state we have no connection with any other concern of this kind and never did have.

We trust you will enroll immediately as a member and permit us to introduce you to the lady whose photo is enclosed, and remember if this lady does not suit you, we agree to secure for you a wealthy, loving companion.

Hoping you realize the importance of an immediate decision and that you will grasp the opportunity we offer, we remain,

Respectfully,

THE SEARCHLIGHT CLUB,
Per MARION GREY,

Mgr.

P.S. — Please do not ask us to place you in communication with any of our clients unless you join this association and send us the necessary membership fee, as we positively will not do so, for we cannot furnish the names of our clients to any but members.

And on the reverse side of which said letter then and there was an application blank of the tenor following :

(It occurred to the author that the application appearing on next page would be interesting as proving that business methods are essential even in matrimonial affairs.)

APPLICATION BLANK

Do not fill this application blank with your answers unless you enclose fee.

Name
 Address in full
 Age Height Weight
 What is the color of your Hair? Eyes? Complexion?
 What is your Nationality? Religion?
 Would you refuse, if otherwise suited, to marry one of different religion from your own?
 What is your Occupation? Income?
 Have you a Common School or College Education?
 Are you accomplished in Music? Form? Are you Crippled or Deformed?
 What is the Value of your Property, both Personal and Real?
 What amount do you expect to inherit?
 Were you ever Married? If so, have you any Children?
 Were you ever Divorced?
 What is your disposition? Do you use Tobacco or Alcoholic Drinks? Do you dress Stylish or Plain?
 Are you considered handsome or Plain?
 Do you care much for Society? Are you fond of Home?
 Are you fond of Children?
 Are you Healthy?
 Do you prefer City or Country Life?
 Enclosed find \$5.00 Registration Fee. Date of application?
 NOTICE: Address all communications and make all Money Orders, Express Orders, Drafts, etc., payable to MARION GREY.

REMARKS

(Give us an idea of what kind of a life companion you would want and such other remarks as would aid us in making selections for you.)

which said letter when so placed in the said post office and so caused to be placed therein, was enclosed in an envelope which then and there bore one uncancelled United States two cent postage stamp and the following direction and address, to wit:

P. O. Box 120
 Bradford,
 Vt.

INDICTMENT — USING THE MAILS TO DEFRAUD [FORM 66

against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

2. And the grand jurors aforesaid, upon their oaths aforesaid, do further present that the said Marion Grey, on the said eighth day of August, in the same year of our Lord nineteen hundred and seven, at Elgin aforesaid, in the division and district aforesaid, so having devised the scheme and artifice to defraud described in the first count of this indictment as in that count set forth, in and for executing the same, and in and for attempting so to do, and in and for defrauding by and through that scheme and artifice one William Grable, then resident at Dearborn, in the State of Missouri, who was another one of the persons mentioned in the first count of this indictment as being persons whom the said Marion intended to defraud by and through the said scheme and artifice, unlawfully, willfully and fraudulently did place, and cause to be placed, in the post office of the said United States at Elgin aforesaid, to be sent and delivered to the said William Grable at Dearborn aforesaid, by the said Post Office Establishment of the said United States, a certain circular, to wit, a circular of the tenor here following, to wit:

(On the first page thereof)

A FEW TESTIMONIALS

In order that you may see how our clients feel about our methods, we print below a few only of the hundreds of letters we receive daily from satisfied members.

SAN FRANCISCO, Cal.

The Searchlight Club.

DEAR SIRS:— Please take my name from your lists, as I am now married to one of the sweetest women in the world and have a happy home. My wife joins me in sending you our best wishes for your future success.

S. F. HANEY.

(Note: Evidence of happy marriages was offered in the Grey trial. It did not succeed in court but earned a pardon from President Taft.)

KANSAS CITY, Mo.

DEAR MADAM:—Two months ago I joined your club and I married a Missouri lady two years older than I and we are certainly enjoying life in the very best style. She has a big farm of three hundred and ten acres. My wife and I wish to thank you for your kindness.

GEORGE CARY.

JACKSONVILLE, Fla.

The Searchlight Club.

I write to let you know I have made my choice of a husband and you can take me out of the club. He did not have any money, but I guess I have got enough for both of us. He is a fine man and I love him. I hope many others will find happiness through your club as I have.

SALT LAKE CITY, Utah.

The Searchlight Club.

GENTLEMEN:—Three months ago I joined your club. At that time I was in hard circumstances and saw no way out. Through you I found a woman that I could love and who had money to straighten things out; so I am now the happiest man in the world. Scratch my name from your lists.

H. O. KOPH.

DEAR MADAM:—As I am now corresponding with a young lady whom I admire very much, and who was secured through your club, and as we will be married next month, I do not care to meet any other lady members, as I am perfectly charmed with my present correspondent. Again thanking you for the kindness you have extended me, I remain,

Very truly,

R. S. MCKENZIE.

AUSTIN, Texas.

The Searchlight Club.

DEAR SIRS:—I have been a member of your club, and through your many kindnesses I was married, June 14, to Miss Bessy B.

INDICTMENT — USING THE MAILS TO DEFRAUD [FORM 66

Kindly take our names off your book. You have brought us much happiness, for which accept our thanks.

CHARLES DAVIS.

NEW YORK, N. Y.

DEAR MADAM:—I am having good results with some of your members, and I thank you sincerely for your kindness and assure you that all your favors have been truly appreciated.

Very sincerely,

C. H. NETHERSON.

LEXINGTON, Ky.

The Searchlight Club.

DEAR FRIENDS:—Please do not give my name and address to any more ladies, as I am pleased with the young lady from Georgia, and we will be married some time in August. Thanking you for the interest you have taken in my welfare, I am,

Yours very truly,

ROBERT ADAIR.

ST. LOUIS, Mo.

The Searchlight Club.

DEAR MADAM:—The first lady you introduced me to I like immensely. She is a beautiful Christian lady, and I hope to be her husband shortly. Also, I am pleased to say that I am delighted with the courtesy and attention that you have shown me since I have become a member of your club. Now wishing you every prosperity, I am,

Most sincerely,

K. R. NIELSTROM.

CHARLESTON, S. C.

DEAR MADAM:—Please accept my thanks for your discretion in placing my name with a most estimable lady of rank and honor, Mrs. J. C. C., of Kansas City. In the near future she will become my wife, and we will call at your office to thank you personally. Kindly thanking you again for your past favors, I am,

Respectfully,

J. L. KENT.

CLEVELAND, Ohio.

The Searchlight Club.

Thanking you kindly for past favors to me, will say that I've been well suited through your club, and do not care to receive any more names. I shall recommend you to all who may wish to get acquainted with a nice young lady from other places, as I did. Kindly thanking you again, I must close.

Very truly,

MARTIN PHILLIPS.

PROVIDENCE, R. I.

The Searchlight Club.

I am pleased to say I am happily married to one of your lady members, and I wish to thank you for the explicit interest you have taken in me during my membership in your club. Now wishing you much success, I am,

Very truly,

C. B. FAIRCHILD.

QUEBEC, Canada.

DEAR MADAM:— Please do not give my name to any more ladies, as I am pleased with Miss J., the first lady you sent the address of. She is sweet and pretty, and I think can suit me in every particular. You can also take her name off your book, and we will marry this winter. Again thanking you from the bottom of my heart, I am,

Truly yours,

R. L. DRAPER.

AUGUSTA, Me.

The Searchlight Club.

DEAR MADAM:— I cannot praise your club too highly. When I joined I thought you made big promises and I tell you honestly I did not think you could do so good as you said, but I know better now. You have done for me as much and more than you said. I have got a good woman and you needn't pay any more attention to me.

INDICTMENT — USING THE MAILS TO DEFRAUD [FORM 66

ATLANTA, Ga.

DEAR FRIEND:— I have made my selection from the list you have sent me, and I have decided to marry at an early date. I found her to be as you represented, and I am truly thankful to you for having given me her name and address. Accept thanks.

JOHN DREW.

To endeavor to acquire money by any legitimate means is praiseworthy and commendable. Thousands of energetic, reliable, capable men are working for others for a bare living that, if they had the means, could come to the front in business and command the respect of the business world, and about the only chance they have to rise from poverty to riches is to marry a woman with money. Marrying a rich woman is perfectly legitimate, and why not make up your mind, if you are comparatively poor, to try it. It is just as legitimate and honorable and just as fair, square and right for a poor man to marry a rich woman as for a poor woman to marry a rich man. The question of marriage concerns only the contracting parties; if they are satisfied, no one else has cause to complain.

Thousands of enterprising, persevering men have married ladies with means through matrimonial agencies, and instead of working and slaving for others, for a bare existence, are now happy and prosperous. They have a home and business of their own, and are looked up to as respectable, solid citizens. They are enjoying life, for they have the means to gratify every wish and desire. What has been done can be done again. Your chances are as good as theirs; there are just as many and just as wealthy ladies looking for suitable husbands now as ever. Success in this world does not come by chance; it must be sought after diligently. You can never know what you are capable of until you try. Women with money are not always looking after rich men. Brains, good common sense and enterprise win in many cases where money and position have failed. Women are alive to the fact that men who know the value of money and know how to appreciate it, are better managers and money-makers than the sons of wealthy men and spendthrifts, who have never earned an honest dollar in their lives.

Our facilities for placing you in correspondence with wealthy ladies and bringing about a marriage are greater than those of any other bureau or matrimonial agency in this country. We are in correspondence with more wealthy ladies desirous of marrying than all the other agencies combined. When you make up your mind to marry a rich wife, fill out the enclosed blank, return it to us with our fee and we will immediately go to work for you and we will stand by you and keep working for you until you succeed.

(And on the reverse side thereof)

NEW REGISTRATIONS

**THESE ARE A FEW TAKEN AT RANDOM FROM OUR FILES OF LADIES
WHO HAVE RECENTLY REGISTERED**

Colorado Widow — Been a widow 18 months; 42 years old; 5 ft. 5 in. high; weight, 130; light hair and complexion; stylish dresser; good education. Owns a large hotel. Has about \$30,000 in cash and paying mines.

Iowa Lady — Age 38; never been married; 5 ft. 5 in. high; weight, 140; good looking; good education; brown hair; ruddy complexion. Worth \$25,000.

Wisconsin Widow — Age 29; height, 5 ft. 6 in.; weight, 130; Irish and German; blond hair; blue eyes. Worth \$32,000; has large income.

North Carolina Maiden — 20 years old; 5 ft. 4 in. tall; weight, 150; black hair; gray eyes; fair complexion; American; fair education. Worth \$37,000 in real, personal property and cash.

New York Widow — Age 32; height, 5 ft.; weight, 137; light hair; fair complexion; German descent; Catholic. Worth \$22,000, mostly invested in real estate.

Minnesota Lady — Age 42; height, 5 ft. 5 in.; weight, 165; brown hair; blue eyes; light complexion; Swedish; has magnificent home. The money she has invested brings her an income of \$10,000 a year.

INDICTMENT — USING THE MAILS TO DEFRAUD [FORM 60

Pennsylvania Widow — Age 26; height 5 ft. 5½ in.; weight, 132; brown hair; gray eyes; light complexion; American. Owns real estate in large city worth \$40,000; brings an income of \$8,000 a year. Want husband to take charge.

Montana Maiden — 5 ft. 4 in. high; weight, 125; age 24; dark hair; dark eyes; fair complexion; good education; good looking. Owns interest in gold mines worth \$40,000.

Connecticut Widow — Middle aged; 5 ft. 6 in. high; black hair; light complexion; American; fair looking; neat dresser; good education. Worth \$20,000.

Kentucky Widow — Age 45; black hair; brown eyes; American. Owns large general store, also large farm. Good looking; college education. Worth \$20,000.

Ohio Maiden — 18 years old; 5 ft. 2 in. high; weight, 125 pounds; brown hair; brown eyes; fair complexion; English. Worth \$15,000 in her own right. Will inherit \$20,000.

California Widow — Age 50; height, 5 ft.; weight, 150; brown hair; hazel eyes; English and German; fair education. Owns large fruit farm. Worth \$35,000.

WE HAVE HUNDREDS OF OTHERS

3. And the grand jurors aforesaid, upon their oaths aforesaid, do further present that the said Marion Grey, on the first day of July, in the same year of our Lord nineteen hundred and seven, at Elgin aforesaid, in the division and district aforesaid, so having devised the scheme and artifice to defraud described and set forth in the first count of this indictment as in that count set forth, in and for executing the same, and in and for attempting so to do, and in and for defrauding by and through that scheme and artifice one Minnie Coleman, then resident at Milwaukee, in the State of Wisconsin, who was another one of the persons mentioned in the first count of this indictment as being persons whom the said Marion Grey intended to defraud by and through the said scheme and artifice unlawfully, willfully and fraudulently did

place, and cause to be placed, in the post office of the said United States, at Elgin aforesaid, to be sent and delivered to the said Minnie Coleman, at Milwaukee aforesaid, by the post office establishment of the said United States, a certain other circular, to wit, a circular of the same tenor as the circular set forth in the second count of this indictment, which said circular when so placed in the post office at Elgin aforesaid and so caused to be placed therein, so to be sent and delivered by the said Post Office Establishment as aforesaid, was then and there enclosed in an envelope, which then and there bore uncancelled United States postage and was directed and addressed to the said Minnie Coleman, at Milwaukee aforesaid, the exact amount of postage then and there being on the said envelope and the exact direction and address then and there being on the same are to the said grand jurors unknown; against the peace and dignity of the said United States and contrary to the form of the statute of the same in such case made and provided.

EDWIN W. SIMS,
United States Attorney.

GROUP V

SEARCH WARRANT PROCEEDINGS

- No. 67. Petition to Quash Search Warrant.
- No. 68. Order Denying Petition to Quash.
- No. 69. Petition for Writ of Error to Quash Search Warrant.
- No. 70. Assignment of Errors.
- No. 71. Search Warrant.
- No. 72. Special Form — Writ of Error.

FORM NO. 67

Petition to Quash Search Warrant.

Veeder *v.* United States, 252 Fed. 414 (C. C. A. 7th Cir.).

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois,
Eastern Division.

United States }
 v.
Various Documents. }

Now comes the petitioner, Henry Veeder, and alleges that he is a citizen of the United States and a resident of the City of Chicago and State of Illinois, and that he is the occupant of the premises described in the search warrant issued herein, suite 1200 Fort Dearborn Bank Building, in said City of Chicago, and that he is the person in whose possession the papers, documents and memoranda described in the said search warrant are claimed to be, and your petitioner respectfully prays that said search warrant may be quashed and held for naught and that the papers, memoranda and documents taken under the pretended

authority thereof may be immediately returned to his possession, for the following reasons:

First. The affidavit and sworn statement of one Hugh McIsaac, upon which the said search warrant was issued, furnished no sufficient basis for the issuance of said search warrant, for the reason that there are no facts stated in said affidavit or in said sworn testimony which show any probable cause for the issuance of the warrant;

Second. The said search warrant is vague, insufficient and uncertain for the reason that the property attempted to be taken thereunder is not particularly identified and described;

Third. There has been presented no sufficient affidavit or statements of fact, supported by oath or affirmation, showing that a felony or other violation of any laws of the United States has been committed, as a ground for the issuance of said search warrant;

Fourth. The said search warrant purports to have been issued upon the affidavit of one Hugh McIsaac "that he has good reason to believe, and does verily believe, that in and upon certain premises . . . there has been and now is located and concealed certain property . . . which said property has been used as a means to commit certain felonies." But the facts, if any, which furnish the foundation for said alleged belief are not set out in said affidavit;

Fifth. The affidavit and the sworn testimony, in support of the application for said search warrant, do not set out facts from which it would appear how or in what manner, or by what means, the said papers, documents and memoranda described in the said search warrant were used or attempted to be used in the commission of any alleged felony;

Sixth. There is not pending in this court, or in any other court of the United States, any charge against this petitioner of the commission of any of the alleged felonies referred to in said affidavit or in said sworn testimony, nor is there any charge of any such alleged felony now pending in this court, or in any other court of competent jurisdiction against any of the corporations named in said affidavit and said sworn testimony;

Seventh. The affidavit and the sworn testimony in support

PETITION TO QUASH SEARCH WARRANT [FORM 67]

of the application for said search warrant do not set forth the facts tending to show the grounds of the application or probable cause for believing that they exist.

Paragraph 2 of § 10496-1/4b of the Act of June 15th, 1917, is unconstitutional and in violation of the Fourth and Fifth Amendments to the Constitution of the United States.

Eighth. The said search warrant is illegal and void for the reason that under its pretended authority the petitioner and his premises are being subjected to an unreasonable search and seizure in violation of the Fourth Amendment to the Constitution of the United States;

Ninth. The said search warrant is void and illegal in that through and by means thereof an attempt is being made to compel the petitioner to be a witness against himself, in violation of the Fifth Amendment to the Constitution of the United States;

Tenth. Section 2 of Title II of said Act of June 15th, 1917, under which said search warrant was issued, does not authorize the search for and seizure of "papers", and for that reason said search warrant is void;

Eleventh. Said search warrant is void for the reason that it authorizes the search for and seizure of "papers" of the petitioner and others named in the said affidavit and sworn testimony, which "papers" are not "papers" claimed in said affidavit and in said sworn testimony to have been used in violation of Section 22, Title XI of said Act of June 15th, 1917;

Twelfth. The said search warrant is void for the reason that it does not particularly describe the property to be seized, in this, that it does not state who is the owner of the property to be searched for and seized;

Thirteenth. The said search warrant is void because it authorizes and directs the search and seizure of communications, letters, papers and documents of the petitioner, without regard to the question as to whether such communications, letters, papers and documents are privileged communications as between attorney and client.

Wherefore, for the reasons aforesaid, the petitioner respectfully prays that the said search warrant may be quashed and the court order for the issuance thereof vacated, and that all papers, docu-

ments, memoranda and books already seized by said officers and agents under the pretended authority of said search warrant may be forthwith returned to the petitioner, which said papers and documents are referred to in the receipt of the Deputy United States Marshal, attached hereto, marked Exhibit A and made a part hereof.

HENRY VEEDER,
Petitioner.

JOHN J. HEALEY,
EDWARD GODMAN,
GEO. P. McCABE,
Attorneys for Petitioner.

FORM NO. 68

Order Denying Petition to Quash

Reversed in *Veeder v. United States*, 252 Fed. 414 (C. C. A. 7th Cir.).

United States of America, } ss.
Northern District of Illinois. }

IN THE DISTRICT COURT OF THE UNITED STATES,

In and for the Northern District of Illinois,

Eastern Division.

United States of America v. Certain Documents in Suite No. 1200 of Fort Dearborn Bank Building of Chicago.	In the Matter of the Petition of Henry Veeder to Quash, etc.
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Now on this day comes on for hearing the amended petition of Henry Veeder in the above entitled cause, to set aside and vacate the order entered in said cause on February 5th, 1918, and to quash the search warrant which issued pursuant to said order, and for the return of certain letters, papers and documents, and the parties hereto being now present in court, and the court having heard the arguments of counsel for the respective parties, and being fully advised in the premises, it is hereby

PETITION FOR WRIT OF ERROR

[FORM 69]

Ordered, Adjudged and Decreed that the prayer of said amended petition of Henry Veeder to set aside and vacate said order of February 5th, 1918, and to quash the search warrant issued in pursuance thereof and for the return of certain letters, papers and documents, be, and the same is hereby overruled and denied, and said amended petition is hereby ordered dismissed;

Veeder excepts.

Enter:

KENESAW M. LANDIS,
Judge.

FORM NO. 69

Petition for Writ of Error to Quash Search Warrant.

Veeder *v.* United States, 252 Fed. 414 (C. C. A. 7th Cir.).

IN THE CIRCUIT COURT OF APPEALS FOR THE UNITED STATES
Seventh Circuit

United States of America

v. Certain Documents in Suite No. 1200
of Fort Dearborn Bank Building of
Chicago. } In the Matter of the
Petition of Henry
Veeder to quash,
etc.

To the Honorable, the Judges of the Circuit Court of Appeals
for the United States, Seventh Circuit.

The above named Henry Veeder, petitioner, feeling himself aggrieved by the order and judgment of the District Court of the United States for the Northern District of Illinois, made and entered herein on the 11th day of February, A.D. 1918, in the above entitled cause, does hereby pray for the issuance of a writ of error from the United States Circuit Court of Appeals for the Seventh Circuit, to said District Court, and that the said writ of error may operate as a supersedeas, for the reasons specified in the assignment of errors which is filed herewith, and further prays that citation be granted to the above named United States of America and Charles F. Clyne, as the District Attorney for the United States in and for the District aforesaid, commanding them to appear before the said United States Circuit Court of

FORM 69] SEARCH WARRANT PROCEEDINGS

Appeals to do and receive what may appertain to justice to be done in the premises, and that a transcript of the pleadings, exhibits, proofs, evidence, records and proceedings in the case and upon which said judgment and order were made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Seventh Circuit.

HENRY VEEDER
by JOHN J. HEALY
ELWOOD G. GODMAN
FRANCIS E. BALDWIN and
GEO. P. McCABE
his Attorneys.

FORM NO. 70

Assignment of Errors.

Veeder v. United States, 252 U. S. 414 (C. C. A. 7th Cir.).

United States } ss.
of America }

IN THE DISTRICT COURT OF THE UNITED STATES
In and for the Northern District of Illinois,
Eastern Division Thereof.

United States of America }
v. }
Certain Documents in Suite No. 1200 }
of Fort Dearborn Bank Building of }
Chicago. }

IN THE MATTER OF THE PETITION TO QUASH, ETC. OF HENRY VEEDER

Now comes Henry Veeder, petitioner, and says that in the record, proceedings, order and judgment therein entered on February eleventh, A.D. 1918, there is error in this, to wit:

1. The said District Court of the United States erred in overruling the petition of said Henry Veeder to quash the search warrant ordered issued in said cause on February 5, 1918.

ASSIGNMENT OF ERRORS

[FORM 70]

2. The said District Court of the United States erred in refusing to vacate and set aside the order of February 5, 1918, directing a search warrant to issue in the above entitled cause.
3. The said District Court of the United States erred in entering the order of February 5, 1918, directing a search warrant to issue in the above entitled cause.
4. The said District Court of the United States erred in entering said order of February 5, 1918, in that said order violates the Constitution of the United States and more particularly the Fourth Amendment thereto.
5. The said District Court of the United States erred in refusing to vacate and set aside said order of February 5, 1918, in that said order directed an unreasonable search and seizure in violation of the Constitution of the United States and more particularly the Fourth Amendment thereto.
6. The said District Court of the United States erred in refusing to quash the search warrant issued under said order of February 5, 1918, as said search warrant was issued in violation of the Constitution of the United States and more particularly the Fourth Amendment thereto, in that it purports to authorize an unreasonable search and seizure within the meaning of said Amendment.
7. The said District Court of the United States erred in entering said order of February 5, 1918, in that there was no probable cause shown for the entry of said order.
8. The said District Court of the United States erred in refusing to vacate and set aside said order of February 5, 1918, in that no probable cause was shown for the entry of said order.
9. The said District Court of the United States erred in refusing to quash the search warrant directed to be issued by said order of February 5, 1918, in that no probable cause was shown for the issuance of said search warrant.
10. The said District Court of the United States erred in entering said order of February 5, 1918, directing the issuance of a search warrant in that said District Court was without jurisdiction to enter said order.
11. The said District Court of the United States erred in refusing to quash said search warrant issued under said order of

February 5, 1918, in that said District Court was without jurisdiction to direct the issuance of said search warrant.

12. The said District Court of the United States erred in entering said order of February 5, 1918, in that there was no showing that the property therein referred to was used as the means of committing a felony.

13. The said District Court of the United States erred in refusing to vacate and set aside the order of February 5, 1918, in that there was no showing that the property therein referred to was used as the means of committing a felony.

14. The said District Court of the United States erred in refusing to quash said search warrant issued under said order of February 5, 1918, in that there was no showing that the property therein referred to was used as the means of committing a felony.

15. The said District Court of the United States erred in entering said order of February 5, 1918, directing the issuance of a search warrant, in that no affidavit was filed or deposition taken in said cause, naming or describing the property sought to be seized by said search warrant.

16. The said District Court of the United States erred in refusing to vacate and set aside the order of February 5, 1918, in that no affidavit was filed or deposition taken in said cause, naming or describing the property sought to be seized by said search warrant issued under said order of February 5, 1918.

17. The said District Court of the United States erred in refusing to quash said search warrant issued under said order of February 5, 1918, in that no affidavit was filed or deposition taken in said cause, naming or describing the property sought to be seized by said search warrant.

18. The said District Court of the United States erred in that there was no foundation in law for the entry of said order of February 5, 1918.

19. The said District Court of the United States erred in that there was no foundation in fact for the entry of said order of February 5, 1918.

20. The said District Court erred in that there was no foundation in law in refusing to vacate and set aside said order of February 5, 1918.

21. The said District Court erred in that there was no foundation in fact for refusing to vacate and set aside said order of February 5, 1918.

22. The said District Court of the United States erred in refusing to quash said search warrant as there was no foundation in law for the issuance of the same.

23. The said District Court of the United States erred in refusing to quash said search warrant as there was no foundation in fact for the issuance of the same.

24. The said District Court of the United States erred in entering said order of February 5, 1918, because Swift & Company, a corporation referred to in said proceedings, could not be guilty of committing a felony.

25. The said District Court of the United States erred in entering said order of February 5, 1918, because the said order and the search warrant issued thereunder is too sweeping and is utterly unreasonable in its terms and provisions.

26. The said District Court of the United States erred in not quashing said warrant because it is too sweeping and utterly unreasonable in its terms and provisions, and its execution would completely put a stop to the business of your petitioner.

27. The said District Court of the United States erred in that the said order of February 5, 1918, and the said warrant that issued pursuant thereto, violate the rights of your petitioner as an attorney-at-law or member of the bar of said court and directs the seizure of privileged and confidential professional communications, letters, papers and documents that passed exclusively between your petitioner and various of his clients, severally, which clients include not only said Swift & Company but also a considerable number of other persons, firms and corporations, and that none of said clients has consented to such seizure or to the disclosure of any such confidential and privileged matters.

28. The said District Court of the United States erred in entering said order of February 5, 1918, because it required your petitioner to give and produce evidence that might tend to incriminate him in violation of the Constitution of the United States and the Fifth Amendment thereto.

29. The said District Court of the United States erred in refusing to quash said search warrant because the said search warrant compelled your petitioner to give and produce evidence that might tend to incriminate him in violation of the Constitution of the United States and of the Fifth Amendment thereto.

30. The said District Court of the United States erred in that said search warrant violates the law with regard to the particularity required in the description of property and papers to be taken under a search warrant.

31. The said District Court of the United States erred in entering said order of February 5, 1918, because the books and other documents therein referred to are not covered by, embraced within the act of Congress approved June 15, 1917, nor any other act.

32. The said District Court of the United States erred in that the said search warrant directs the seizure, and there were seized thereunder, the books and other documents therein referred to which are not covered by, nor embraced within the act of Congress approved June 15, 1917, nor any other act.

33. The said District Court of the United States erred in that the said Act of Congress approved June 15, 1917, and more particularly, Paragraph 2 of Section 2 of said Act, is unconstitutional, as it violates the Constitution of the United States, and particularly the Fourth Amendment thereto.

34. The said District Court of the United States erred in that the said Act of Congress approved June 15, 1917, and more particularly, Paragraph 2 of Section 2 of said Act, is unconstitutional in that it violates the Constitution of the United States, and particularly the Fifth Amendment thereto.

35. The said District Court of the United States erred in that it authorized and permitted the issuance of said search warrant without having before it any fact or proof showing the pendency of said search or other court proceeding upon which the issuance of said search warrant could properly be based.

Wherefore, and for divers other errors in the record, proceedings, judgment and orders of this court in this cause appearing, the said Henry Veeder prays that the order entered herein on the

SEARCH WARRANT

[FORM 71]

eleventh day of February, A.D. 1918, be reversed as to the above stated matters.

Dated this 12th day of February A.D. 1918.

HENRY VEEDER,
By JOHN J. HEALY,
ELWOOD G. GODMAN,
FRANCIS E. BALDWIN,
GEO. P. McCABE,
His Attorneys.

FORM NO. 71

Search Warrant.

Held defective in Veeder *v.* United States, 252 Fed. 414 (C. C. A. 7th Cir.).

The President of the United States of America, To the Marshal of the United States for the Northern District of Illinois, and to his deputies, and to any or either of them, Greeting:

Whereas Hugh McIsaac has this day made oath in writing, before the undersigned, United States District Judge for the Northern District of Illinois, to the effect that he has good reason to believe, and does verily believe, that in and upon certain premises within said district, to wit, in suite 1200 in the building at 76 West Monroe Street, in the city of Chicago, known as the Fort Dearborn Bank Building, said suite being the offices occupied by one Henry Veeder, there has been and now is located and concealed certain property, to wit, books of account, minute books, letter-press copy books, ledgers, journals, cash books, day books, memorandum books, bank books, check books, receipt books, and other documents, which other documents are more particularly enumerated, described, and indexed by words, letters, and figures as follows, to wit.

(Here follow forty-seven pages of indexes which are in words and figures the same as those which appear in the affidavit of Hugh McIsaac a true copy of which is set forth in full in this record.)

Which said property has been used as a means of committing certain felonies; that is to say, the felony on the part of Swift

& Company, a corporation organized under the laws of the State of Illinois, of storing, acquiring, and holding, for the purpose of limiting the supply thereof to the public and affecting the market price thereof in commerce among the several states, of certain articles suitable for human food, to wit, meats, canned vegetables, canned fruit, canned fish, poultry, cheese, butter, eggs, and oleomargarine; the felony on the part of said corporation of willfully making false entries and statements of fact in certain reports pertaining to the ownership and control of subsidiary corporations by said corporation, which the Federal Trade Commission required it to make under subdivision (b) of Section 6 of the Act approved September 26, 1914, entitled, "An Act to create a federal trade commission, to define its powers and duties, and for other purposes;" the felony on the part of said corporation of willfully making false entries in divers accounts, records, and memoranda kept by said corporation of all facts and transactions appertaining to the business of said corporation, it being a corporation subject to said act of Congress; the felony on the part of said corporation of willfully neglecting and failing to make, or causing to be made, full, true, and correct entries in said accounts, records and memoranda of all facts and transactions appertaining to the business of said corporation; and the felony of engaging in a conspiracy with Armour & Company, Morris & Company, Wilson & Co., Inc., Cudahy & Company, and with divers other corporations and divers individuals and partnerships, to defraud the United States through and by means of collusive bidding upon contracts, to be let to the lowest bidder, to furnish to the United States large quantities of meats, hides, leather, canned goods, and other commodities for the use of the military and naval forces of the United States: whereupon said Hugh McIsaac prays a warrant to search said premises; Now, therefore, pursuant to Section 2 of Title II of the Act of Congress approved June 15, 1917, pertaining to the better enforcement of the criminal laws of the United States, you are hereby authorized and empowered, to enter said premises, in the daytime only, and thoroughly search the same for all such property, and to seize and take the same into your possession, to the end that the same may be dealt with according to law. And hereof make due return, with a

SPECIAL FORM — WRIT OF ERROR

[FORM 72]

written inventory of the property taken by you or either or any of you, without delay.

Witness the hand of said District Judge, at Chicago, in said district, and the seal of said court, this fifth day of February, 1918, and of the Independence of the United States the 141st year.

(Sd.) KENESAW M. LANDIS,
District Judge.
(Seal)

FORM NO. 72

Special Form — Writ of Error.

Veeder *v.* United States, 252 Fed. 414 (C. C. A. 7th Cir.).

United States } ss.:
of America.

The President of the United States, To the Honorable the Judges of the District Court of the United States, for the Northern District of Illinois, Eastern Division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you, or some of you, between United States of America, plaintiff, and Henry Veeder, respondent in certain proceedings for a search warrant entitled United States *v.* Certain Documents in Suite 1200 Fort Dearborn Bank Building, Chicago, a manifest error hath happened, to the great damage of the said Henry Veeder as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Seventh Circuit, together with this writ, so that you have the same in the United States Circuit Court of Appeals for the Seventh Circuit at Chicago, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals for the Seventh Circuit may cause further to be done therein to

correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 12th day of February, in the year of our Lord one thousand nine hundred and eighteen.

(Seal)

Allowed by

EDWARD M. HOLLOWAY,

*Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.*

Northern District } ss.
Of Illinois.

In obedience to the within writ, I herewith transmit to the United States Circuit Court of Appeals for the Seventh Circuit, a true and complete transcript of the record and proceedings in the foregoing entitled cause this 13th day of February A.D. 1918.

T. C. MACMILLAN,

*Clerk of the District Court of the United
States for the Northern District of
Illinois.*

GROUP VI

CONSPIRACY TO DEFRAUD THE UNITED STATES

- No. 73. Indictment for Conspiracy to Defraud the United States.
- No. 74. Motion for the Return of Certain Documents Illegally Seized.
- No. 75. Affidavit in Support of Motion to Return Papers Seized.
- No. 76. Another Affidavit in Support of Same Motion.
- No. 77. Proceedings on Motion to Return Papers Seized.
- No. 78. Indictment — Conspiracy to Defraud the United States.
- No. 79. Demurrer to Indictment.
- No. 80. Order on Trial.
- No. 81. Order on Trial, Verdict, etc.
- No. 82. Order Extending the Time to File Bills of Exceptions.

FORM NO. 73

Indictment for Conspiracy to Defraud the United States.

Fitter v. United States, 258 Fed. 567 (C. C. A. 2d Cir.).

INDICTMENT

DISTRICT COURT OF THE UNITED STATES OF AMERICA

For the Eastern District of New York

At a Stated Term of the District Court of the United States of America, for the Eastern District of New York, begun and held in the Borough of Brooklyn, City of New York, within and for the District aforesaid, on the fifth day of December, in the year of our Lord one thousand nine hundred and seventeen, and continued by adjournment to and including the thirty-first day of December, in the year of our Lord one thousand nine hundred and seventeen.

FORM 73] CONSPIRACY TO DEFRAUD THE UNITED STATES

EASTERN DISTRICT OF NEW YORK, ss.:

THE GRAND JURORS OF THE UNITED STATES OF AMERICA,
within and for the district aforesaid, on their oaths present that

GEORGE C. GOODMAN,
EDWARD WILL,
JOHN FITTER,
JOSEPH KATZ,
HENRY WITTHORN and
MOSES PRAGER,

each of them, late of the Borough of Brooklyn, County of Kings, State and Eastern District of New York, hereinafter called the defendants, did heretofore, to wit: During the period between the 1st day of July, 1917, and the 10th day of November, 1917, in the Borough of Brooklyn, County of Kings, State and Eastern District of New York, and within the jurisdiction of this Court, unlawfully conspire, federate and agree to defraud the United States in the manner following; that is to say, the defendants George C. Goodman and Edward Will, at the time of the formation of said conspiracy, and at the time of the commission of the overt acts done pursuant thereto, as hereinafter set forth, were employes of the United States, in the service of the Navy Department, at the City Park Barracks, in the Borough of Brooklyn aforesaid, where it was their duty to examine and check incoming supplies purchased or ordered by the United States Government and delivered at said City Park Barracks, to issue therefor to persons delivering the same receipts or slips indicating accurately the quantities of supplies and provisions so delivered and left in the possession of and available to the United States at said City Park Barracks, and to make memoranda of and report the respective amounts of supplies and provisions so delivered by the various persons delivering, from which the office of the Paymaster in the United States Navy Yard, at the Borough of Brooklyn aforesaid, was to be informed of the payments proper to be made by him from the funds of the United States in his custody to the persons thus indicated to have sold and delivered such supplies and provisions at said City Park Barracks as the purchase price of the same; that said John Fitter was prior to and at the time when

said conspiracy was formed a dealer in supplies and provisions such as the defendants or some of them anticipated that the United States would need and would purchase for the use of the Navy Department and, as such dealer, had a place of business at 120 Bridge Street, in the Borough of Brooklyn aforesaid. The said defendants Joseph Katz, Henry Witthorn and Moses Prager, at the time of the formation of the said conspiracy, or thereafter at the time when they severally became parties to the same, and when they severally participated in the overt acts done pursuant to the said conspiracy, as hereinafter set forth, were employes of said John Fitter.

The said defendants anticipated and planned that the defendant John Fitter should agree and arrange to sell and deliver provisions and supplies to the United States for the use of its Navy Department so that only a part of such supplies and provisions should be actually and bona fide delivered at said City Park Barracks and left in the possession of the United States authorities and employes there, and that the said defendants Goodman and Will should cause it to appear by the issuance of false receipts, or otherwise, that such provisions and supplies had been delivered at said City Park Barracks by said John Fitter or his employes and left there in the possession of the authorities and employes of the United States, and should likewise cause it to appear to the said Paymaster, or his assistants, that such provisions and supplies had so been delivered to the United States at said City Park Barracks, and were then and there held available for the use and in the possession of said Department in greater quantities than had actually been delivered and so left in the possession of the employes and authorities of the United States.

And the said defendants anticipated and planned that the said John Fitter and his employes should transport to said City Park Barracks supplies and provisions, pursuant to contracts with or purchase orders of the United States, and should receive from the defendants Goodman and Will, or one of them, the quantities of provisions and supplies so transported, and having thus procured receipts indicating the delivery and acceptance of the quantities of supplies so transported to said City Park Barracks, should at once remove and take away large quantities of such

FORM 73] CONSPIRACY TO DEFRAUD THE UNITED STATES

supplies and should leave only a portion thereof at said City Park Barracks in the possession of the employes and authorities of the United States, and should bring back or cause to be brought back to the place of business of the said John Fitter, or elsewhere, the quantities of provisions and supplies so withdrawn from the amount of delivery, of which such receipts purported to show; and the defendants further anticipated and planned that the said defendants Goodman and Will should cause it to appear to the said Paymaster, or his assistants, that the entire quantities of provisions and supplies, indicated by such receipts, had actually been received, delivered and held at said City Park Barracks for use and consumption as needed when, in truth and in fact, only a portion of such supplies and provisions had been so delivered and held available,

And the said defendants further anticipated and planned that by such falsification of the data upon which the said Paymaster, or his assistants, would make payments to persons so selling and delivering supplies, the said John Fitter would obtain much larger sums of money than he was entitled to receive for the supplies and provisions actually delivered and made available to the United States at said City Park Barracks.

OVERT ACTS

(1) That in pursuance of the said unlawful conspiracy and to effect the object of the same the said Henry Witthorn, did, on or about the fifteenth day of August, nineteen hundred and seventeen, within the said Eastern District of New York, deliver to the City Park Barracks twelve barrels of smoked beef tongue to be inspected and receipted for by said defendant Edward Will, and after said inspection and receipt he the said Henry Witthorn, as instructed by the said John Fitter, did bring back to the store of the said John Fitter, two barrels of the said twelve barrels containing smoked beef tongues.

(2) That in pursuance of the said unlawful conspiracy and to effect the object of the same the said Henry Witthorn did, on or about the twenty-first day of August, nineteen hundred and seventeen, within the said Eastern District of New York, deliver to the City Park Barracks eighteen tubs of butter to be inspected

by the checkers of the Navy Department of the United States at the City Park Barracks aforesaid, and after said inspection he the said Henry Witthorn, as instructed by the said John Fitter, did bring back to the store of the said John Fitter eight of the said tubs of butter.

(3) That in pursuance of the said unlawful conspiracy and to effect the object of the same the said Joseph Katz did on or about the ninth day of September, nineteen hundred and seventeen, within the said Eastern District of New York, deliver to the City Park Barracks fifty-eight cases of eggs to be inspected by the checkers of the Navy Department of the United States at the City Park Barracks aforesaid, and after said inspection he the said Joseph Katz, as instructed by the said John Fitter, did bring back to the store of the said John Fitter five of the said cases of eggs.

(4) That in pursuance of the said unlawful conspiracy and to effect the object of the same the said Henry Witthorn did, on or about the twenty-seventh day of September, nineteen hundred and seventeen, within the said Eastern District of New York, deliver to the City Park Barracks nine barrels containing about two thousand seven hundred and eighty-nine pounds of smoked beef tongues to be inspected by the checkers of the Navy Department of the United States at the City Park Barracks aforesaid, and after said inspection he the said Henry Witthorn, as instructed by the said John Fitter, did bring back to the store of the said John Fitter about twelve hundred pounds of the said smoked beef tongues.

(5) That in pursuance of the said unlawful conspiracy and to effect the object of the same the said Moses Prager did, on or about the nineteenth day of October, nineteen hundred and seventeen, within the said Eastern District of New York, deliver to the said City Park Barracks thirteen barrels of chickens to be inspected by the employes of the Navy Department of the United States at the City Park Barracks aforesaid and receipted for by said defendant George Goodman, and after said inspection and receipt he the said Moses Prager, as instructed by the said John Fitter, did bring back to the store of the said John Fitter three of the said barrels of chickens.

And so the Grand Jurors aforesaid, upon their oaths aforesaid,

FORM 73] CONSPIRACY TO DEFRAUD THE UNITED STATES

do say that the said George C. Goodman, Edward Will, John Fitter, Joseph Katz, Henry Witthorn and Moses Prager, and each of them, at the time and places and in the manner and form aforesaid unlawfully and feloniously did conspire to commit an offense against the United States and certain of the aforementioned defendants did do acts to effect the object of the said unlawful conspiracy against the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States in such cases made and provided.

(Signed) MELVILLE J. FRANCE,
*United States Attorney for the Eastern
District of New York.*

(Endorsed)

UNITED STATES DISTRICT COURT
Eastern District of New York.

THE UNITED STATES OF AMERICA,

v.

GEORGE C. GOODMAN, EDWARD WILL, JOHN FITTER, JOSEPH
KATZ, HENRY WITTHORN AND MOSES PRAGER.

INDICTMENT.

Section 37 C. C.

(Signed) MELVILLE J. FRANCE,
*United States Attorney, Federal Build-
ing, Borough of Brooklyn, New York
City, N. Y.*

A True Bill.

Filed

Foreman.

FORM NO. 74

Motion for the Return of Certain Documents Illegally Seized.

Fitter v. United States, 258 Fed. 567 (C. C. A. 2d Cir.).

DISTRICT COURT OF THE UNITED STATES OF AMERICA
For the Eastern District of New York

UNITED STATES OF AMERICA

against

GEORGE C. GOODMAN, EDWARD WILL, JOHN FITTER, JOSEPH
KATZ, HENRY WITTHORN and MOSES PRAGER, *Defendants.*

SIR:

PLEASE TAKE NOTICE that on the affidavits of John Fitter and Rebecca A. Fitter, verified the 2d day of April, 1918, copies of which are annexed hereto, a motion will be made in the Criminal Part of the United States District Court for the Eastern District of New York, at the Post Office Building in the Borough of Brooklyn, County of Kings, City of New York, before Hon. THOMAS I. CHATFIELD, District Judge, on Wednesday, April 3, 1918, at 10:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, for an order directing the United States Attorney for the Eastern District of New York to return to the defendant John Fitter his contract ledger, all delivery slips or receipts, all memoranda taken by Secret Service agents or other officers of the Government from the checkbooks of the defendant John Fitter, and all copies thereof, and all other evidence which was taken from the defendant Fitter's place of business on or about November 10, 1917, in violation of said defendant's constitutional rights under the Fourth and Fifth Amendments of the Constitution of the United States, and also for an order directing the United States Attorney for the Eastern District of New York to destroy all evidence which cannot be returned to the defendant Fitter.

Dated New York, April 2, 1918.

Yours, etc.,

O'GORMAN, BATTLE & VANDIVER,

Attorneys for Defendant John Fitter,

Office and Post Office Address,

37 Wall Street,

Borough of Manhattan,

City of New York.

To:

Hon. MELVILLE J. FRANCE, United States Attorney for the
Eastern District of New York, Federal Building, Brooklyn,
New York City.

FORM 75] CONSPIRACY TO DEFRAUD THE UNITED STATES]

FORM NO. 75

Affidavit in Support of Motion to Return Papers Seized.

Fitter v. United States, 258 Fed. 567 (C. C. A. 2nd Cir.).

DISTRICT COURT OF THE UNITED STATES OF AMERICA

For the Eastern District of New York

UNITED STATES OF AMERICA

against

GEORGE C. GOODMAN, EDWARD WILL, JOHN FITTER, JOSEPH KATZ, HENRY WITTHORN and MOSES PRAGER, Defendants.

**STATE OF NEW YORK, } ss.
COUNTY OF NEW YORK,**

JOHN FITTER, being duly sworn, deposes and says:

That he is one of the defendants in the above-entitled action.

That he has a place of business at 120 Bridge Street, Borough of Brooklyn, County of Kings, State of New York. That on Saturday morning, November 10, 1917, at about eleven o'clock, deponent was arrested at his place of business by a Deputy United States Marshal, and was immediately taken, together with Joseph Katz, Henry Witthorn and Moses Prager, to the office of the United States Commissioner in the Federal Building in the Borough of Brooklyn. That at the time of the arrest he is informed and believes there were present three Deputy United States Marshals and one Secret Service agent. That when he was brought before the United States Commissioner in the Federal Building in Brooklyn he and the other three defendants above mentioned were arraigned before the Commissioner and held in bail for the action of the Grand Jury. That as soon as possible he obtained bail and was released from custody.

That deponent got back to his place of business at about two o'clock in the afternoon of the same day. Upon his return to his place of business he found Secret Service Agent Fitzgerald present. That Mr. Fitzgerald was at that time examining deponent's business checkbooks, two in number.

That after Mr. Fitzgerald left defendant's place of business,

defendant's wife, Mrs. Rebecca A. Fitter, informed him that Mr. Fitzgerald had examined the ledger and the checkbooks and had told her to make out statements of certain accounts in the ledger, which she did and which she gave to Mr. Fitzgerald, together with a number of receipts or slips for the receipt of meat and provisions which had been delivered to the City Park Barracks. That Mr. Fitzgerald had examined the checkbooks and had made extracts of the contents thereof and had questioned her closely about certain stubs, and that she fully explained to Mr. Fitzgerald what the entries in the stubs meant. That Mr. Fitzgerald inquired particularly about a stub which bore the mark "From store to contract", and also about a check for \$260 the stub of which showed it had been drawn "for Josie's check." That he made a note of this check stub, which he also carried away with him. He also inquired particularly about a check the stub for which was marked "For tongues." That deponent's wife explained to Mr. Fitzgerald that this was a check drawn for tongues which had gone from the store for the contract. That Mr. Fitzgerald also inquired particularly about a check dated August 29, 1917, for \$500, the stub of which bore no indication of the purpose for which it was drawn. That defendant's wife explained to Mr. Fitzgerald that she did not know exactly what the check was drawn for, but that it might have been drawn for meat which had gone from the store to the contract.

That shortly after Mr. Fitzgerald had left defendant's place of business an automobile drove up and two men entered defendant's place of business. That one of the men told defendant that he was a secret service man. The other man wore the uniform of the Naval Reserve. That the man who said he was a Secret Service Agent demanded of defendant the ledger which was lying upon defendant's desk in the back office. Thereupon both men went into the back office, and in a few minutes returned bringing with them the ledger containing all accounts with the Government. They went to the cashier's desk in the front of the store and asked the defendant what the book was which was on the cashier's desk, and deponent told them it was the store ledger. That before leaving the store the man representing himself to be a Secret Service Agent promised to return the contract ledger in a little

FORM 75] CONSPIRACY TO DEFRAUD THE UNITED STATES

while after comparing it with the delivery slips. That they thereupon got into the automobile and drove off.

That defendant has not seen the ledger since that day, but he is informed and believes that the ledger and all the other papers and extracts and evidence which were collected by Mr. Fitzgerald and the two other men were turned over to the United States Attorney for the Eastern District of New York.

That thereafter defendant through his counsel demanded in writing the return of the ledger from the United States Attorney for the Eastern District of New York, but that said demand has not been complied with. A copy of said demand is attached hereto.

Deponent has been advised and believes that the memoranda mentioned, his ledger and the other evidence obtained during his absence on the day of his arrest and after his return to his place of business on that day have been used against him in this proceeding.

That deponent is informed and believes that it is the purpose and intention of the United States Attorney for the Eastern District of New York to use this evidence thus unlawfully obtained against him on the trial of this action.

That at no time did the Secret Service agents or other officials of the Government exhibit a search warrant or other evidence of their right to search his premises and carry off his books, papers and other evidence.

Wherefore this defendant demands the return of his ledger, the delivery slips or receipts, all memoranda made by the Secret Service agents or United States Deputy Marshals or officers of the Navy or Reserve Corps, and all copies thereof, and also demands that all evidence thus illegally obtained and which cannot be returned to this defendant be destroyed.

JOHN FITTER.

Sworn to before me this 2nd }
day of April, 1918. }

AMBROSE JOYCE,
[SEAL] Notary Public 89,
N. Y. County.

O'GORMAN, BATTLE & VANDIVER
Attorneys and Counsellors at Law
37 Wall Street, New York

November 14, 1917.

Re United States v. Fitter and others

Hon. MELVILLE J. FRANCE,
United States Attorney,
Federal Building, Brooklyn, N. Y.

My dear Mr. France:

In the above matter I beg to acknowledge your courteous letter of November 12th.

I should be very greatly obliged if you would advise me when the Grand Jury acts upon the cases of the respective defendants. If the indictment is found I do not presume you will ask for any increase of bail, and I understand that the present bond is a bond for trial and therefore it will not be necessary to give a new bond. If I am in error on this point I should be obliged if you would notify me.

Also I am informed by Mr. Fitter that some officer in the case took his ledger from his store without his consent. I should be obliged if you would arrange to have the ledger returned, so that he can use it in the conduct of his business. I will make any stipulation that you desire that the ledger be preserved in its present state so far as items up to date are concerned. As you can see, it is a very great inconvenience to Mr. Fitter to be without the ledger which he has been using in his current business.

Thanking you for your prompt attention to those matters and with personal regards, believe me to be,

Faithfully yours,
GEORGE GORDON BATTLE.

FORM 76] CONSPIRACY TO DEFRAUD THE UNITED STATES

FORM NO. 76

Another Affidavit in Support of Same Motion.

Fitter v. United States, 258 Fed. 567 (C. C. A. 2d Cir.).

DISTRICT COURT OF THE UNITED STATES OF AMERICA

FOR THE EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA
against

GEORGE C. GOODMAN, EDWARD WILL, JOHN FITTER, JOSEPH KATZ, HENRY WITTHORN and MOSES PRAGER, *Defendants.*

STATE OF NEW YORK, } ss.:
COUNTY OF NEW YORK,

REBBECCA A. FITTER, being duly sworn, deposes and says:

That she is the wife of the defendant John Fitter. That she remembers the day when the defendants John Fitter, Joseph Katz, Henry Witthorn and Moses Prager were arrested, which was November 10, 1917. That when she arrived at her husband's place of business he and his said three employes had been taken to the United States Commissioner's office in the Post Office Building, Brooklyn, and Charlie Lesser, one of defendants' employes, was in charge. That she arrived at the place of business about half-past eleven o'clock, which was a little later than usual.

That shortly after her arrival a Mr. Fitzgerald came in and represented that he was a United States Secret Service official. That when he first came in he said, "Henry Witthorn, Henry Witthorn, where is Henry Witthorn?" Deponent replied, "I think he must be on his way up to court; they all left here." He said, "Did they take them?" to which deponent replied, "They must have; they were all gone when I came in." Deponent then asked Mr. Fitzgerald what he wanted, and Mr. Fitzgerald replied, "I would like to see everything pertaining to the City Park Barracks." Deponent then said, "I am Mrs. Fitter; perhaps I could show you." Deponent then produced the ledger and the various receipts which were on file for deliveries to the City Park

ANOTHER AFFIDAVIT IN SUPPORT OF SAME MOTION [FORM 76]

Barracks. Mr. Fitzgerald examined the delivery slips or receipts and the various ledger accounts. Deponent then asked Mr. Fitzgerald if he would not go into the back office with her while others attended to the business. Mr. Fitzgerald was examining the ledger accounts and was about to make copies of various entries when they went into the back office. Deponent thereupon made copies of the various accounts which Mr. Fitzgerald wanted, and gave them to Mr. Fitzgerald. That before making the copies Mr. Fitzgerald told her to make exact copies.

That among said entries was one account which had been corrected by deponent, the original entry showing the delivery of 600 dozen eggs to the City Park Barracks and the corrected entry showing the delivery of 720 dozen. This correction was made by deponent, who was informed that the 600 dozen eggs had not been delivered on the day shown in the ledger, but that 720 dozen had been delivered which had not been entered on the books at all through some oversight on deponent's part. There was another entry which deponent corrected relating to 1300 pounds of butter, which deponent had omitted to enter on the ledger account. Mr. Fitzgerald inquired particularly about these two accounts, and told deponent to make copies of them exactly as they were in the ledger.

Mr. Fitzgerald then demanded that he be shown the checkbooks, whereupon deponent gave him the two checkbooks, one containing the special account for the contracts and the other showing the store account. Mr. Fitzgerald examined the stubs carefully and made notes of the contents of the stubs. He inquired particularly of deponent about a check which had apparently been drawn "To cash Josie's check", and another for \$500 dated August 29, 1917, the stub for which did not show the purpose for which it was drawn. That Mr. Fitzgerald asked her what this check was drawn for, and she said she did not recall, but that it might have been drawn on account of meats taken from the store to contract. There was another check about which Mr. Fitzgerald inquired particularly, which showed it had been drawn "for tongues." Deponent believes that this check was dated some time in August. Deponent explained to Mr. Fitzgerald that at times there was not enough meat to fill the contract and it

FORM 76] CONSPIRACY TO DEFRAUD THE UNITED STATES

was then taken from the store and a check was drawn to the store account. Mr. Fitzgerald made notes of the contents of the check stubs, and then told deponent he would take with him the delivery slips or receipts for meats and provisions which had been delivered to the City Park Barracks, which slips were taken away by Mr. Fitzgerald. That Mr. Fitzgerald said he would leave with deponent a receipt for the slips and other papers which he took with him, but he did not leave such receipt.

That deponent has not seen said delivery slips since but is informed and believes that they are in the possession of the United States Attorney for the Eastern District of New York.

That when Mr. Fitter returned from the United States court in Brooklyn Mr. Fitzgerald was examining the checkbooks in the back office, and he asked Mr. Fitter about the check stub on which was written "For Josie's check." That shortly after Mr. Fitter's arrival Mr. Fitzgerald left.

That about an hour or more after Mr. Fitzgerald left, an automobile drove up and two men entered the store, one of whom said he was a Secret Service Agent. The other man wore a naval uniform of some kind. That shortly after these men entered the store they came to the door of the back office, where deponent was, and one of them said, "Ledger, ledger, contract ledger." That deponent at the time was examining the ledger, and when the men entered the room she closed the ledger. The man in uniform came over to the desk where deponent was, grabbed the ledger and took it out of the office with him. Deponent followed these men to the front of the store, where the man in civilian clothes who represented himself to be a Secret Service agent asked Mr. Fitter what the book was which was lying on the cashier's desk in the front of the store. Mr. Fitter replied that it was the ledger for the store. The two men then left, taking the contract ledger with them. That the Secret Service man said they were going to bring the ledger right back after comparing it with the delivery slips.

That deponent did not see the ledger again until she saw it in the office of the United States Attorney for the Eastern District of New York, on or about the 27th of November, 1917. That deponent saw the ledger again afterward, in the month of Novem-

ber or early in December, 1917, in the office of the United States Attorney for the Eastern District of New York.

REBECCA A. FITTER.

Sworn to before me this 2nd
day of April, 1918.

AMBROSE JOYCE,
[SEAL] Notary Public #89,
N. Y. County.

FORM NO. 77

Proceedings on Motion to Return Papers Seized.

Fitter v. United States, 258 Fed. 567 (C. C. A. 2d Cir.).

Mr. Battle: Now I make a preliminary motion for the return of a certain book of account or ledger and certain other business memoranda and papers which were taken from the possession of the defendant immediately after his arrest without his consent, and, as we claim, entirely illegally. It seems according to the facts set forth in the affidavit, that shortly after the arrest of the defendant and while he was in custody, before he was allowed to return to his place of business, two men claiming to be secret service officers came to the place of business of the defendant Fitter where his wife was in charge, and took away this book and these business memoranda and writings. They afterwards appeared in the possession of the District Attorney and I made a request for the return, both in writing and orally, and they were not returned, and finally on a motion in this Court which was returnable yesterday, for the return of the book and papers, upon the service of the motion papers the book was returned and some of the papers, and yesterday some more of the papers were returned. Mr. Beer had informed me that he returned all the papers in his possession. My client informs me that there were some more papers seized by the so-called Secret Service officials which have not been returned, but Mr. Beer tells me he has returned all the District Attorney has. This motion is now returnable and I should like to inquire whether the District Attorney has any copies or photographs of these papers, and if so, I think they ought

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to be returned or ought to be destroyed under the ruling in the Flagg case and the Weeks case.

Mr. Beer: If the Court please in that connection my friend submits an affidavit in which he encloses a copy of a letter dated November 14, 1917. The record shows that these men were indicted about the 10th of November I think it was or around that time. It also shows that Mr. Battle, who then represented the defendant Fitter, stated that he would be obliged if we would arrange to have the ledger returned, so that Fitter could use it in the conduct of his business: (Reading) "I will make any stipulation that you desire that the ledger be preserved in its present state so far as the items up to date are concerned. As you can see it is very inconvenient for Mr. Fitter to be without the ledger which he has been using in his current business."

In reply to that communication the arrangement was that Mr. Fitter's wife, who was his clerk, should come to the office and examine the ledger, and at no time did we refuse to allow full access to it. The demand for the return was effected by the fact that they were apparently satisfied with the permission to examine all the papers or records that the Government had in its control.

The law emphatically states that defendants who have been injured or alleged to have been injured in these cases must move seasonably for the remedy which they desire. The motion was made the day before this case was definitely set for trial. Now it is the month of April. A request was made in March. A short time ago we had a phone conversation in reference to these same papers with Mr. Battle's office, in which Mr. Battle said that he would like to have the ledger, or like to have permission to see the ledger so that this man could make his income tax return, and I told him he could see the ledger, or better than that he could get an extension from the Collector's office to file the income tax return in view of the fact that he was now under indictment and the Government had in its possession that book. Since this motion was made and the thing was brought on in its regular course in the legal and proper way, which is by motion and only by motion and the demand made according to law, we then and there turned over all the ledger and all the papers that we had under our control. I did discover a few papers that I hadn't turned over, and before

this motion came on for argument this morning we turned over everything we had taken from Mr. Fitter, and furthermore we do not propose to offer in evidence anything that we might have received in the nature of written documents at that time.

The Court: Have you made any photographs or copies?

Mr. Beer: We have not made any photographs or copies of those records.

Mr. Battle: There are two aspects of this situation. The principal aspect and the one that I am now calling your Honor's attention to is the fact that this evidence was illegally used by the District Attorney, was illegally seized and used by him, and the other aspect is that we desired to see that book for the purpose of carrying on our business, it being a business book of accounts, and the District Attorney declined to return the book, so we had to do the best we could in the way of sending his wife here to examine the ledger. We got along as best we could so far as his business needs were concerned, but that doesn't affect the principal question that the evidence was illegally seized and used by the District Attorney in this prosecution.

The Court: The motion is disposed of by the statement of Mr. Beer, I believe.

Mr. Battle: The motion is disposed of so far as it can be.

Mr. Beer: We have turned over everything that we have now and so that this record may be preserved on the appeal and so that the Government rights will be protected, let them say definitely just what they claim that we have so that in the event that it does develop during the course of the trial that we have them in this great mass of papers, the documents that we have we will be glad to turn over.

The Court: That is a perfectly reasonable request.

Mr. Battle: I should like to have an order made for the purpose of the record granting the motion that the papers be turned over, and I should like to have the Court signify its approval of the motion.

Mr. Beer: If the motion includes something we haven't got we can't turn it over.

The Court: There may be an order entered that the District Attorney shall turn over to the defendant Fitter such papers as

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he may have in his possession belonging to the defendant taken in the manner set forth in the moving affidavit.

Mr. Battle: If it should develop that there have been any photographs or copies made without Mr. Beer's knowledge, that they should be destroyed.

Mr. Beer: Or should be turned over to the defendant for his use and his direction.

The Court: Yes.

Mr. Battle: At the request of the District Attorney I will submit a list showing the delivery receipts which were taken by the Secret Service men and which have not been returned.

The Court: If it develops that there have been photographs or copies of the exhibits made without Mr. Beer's knowledge, they should be turned over.

FORM NO. 78

Indictment — Conspiracy to Defraud the United States.

Belvin v. United States, 260 Fed. 455 (C. C. A. 4 Cir.).

The GRAND JURORS of the United States of America, duly impanelled, sworn and charged to inquire within and for the body of the Eastern District of Virginia, and now attending the said Court, upon their oaths present that Karl Hoffman and George W. Belvin, heretofore, to-wit, on or about the tenth day of June, A.D. 1918, in the County of Norfolk in the said Eastern District of Virginia, and within the jurisdiction of this Court, did unlawfully and feloniously conspire, combine, confederate and agree together and with each other to defraud the United States of America, — that is to say, that the said Karl Hoffman and George W. Belvin were, on or about the said tenth day of June, A.D. 1918, in the service and employ of R. B. Porter, A. R. Porter and John D. Porter, partners, doing business under the firm name of Porter Brothers, and hereafter in this indictment called Porter Brothers; that the said Porter Brothers were then and there under contract with the United States of America, which said contract was dated on the twenty-first day of January, A.D. 1918, for the construction of certain buildings and the doing of certain work, which, when completed, was to be known and called "Nor-

INDICTMENT—CONSPIRACY TO DEFRAUD UNITED STATES [FORM 78]

folk Quartermaster Terminal." Among other provisions of the said contract, it was stipulated and provided that the Government of the United States was to pay in full the total cost of the construction of the said buildings and the doing of the said work; and the said Porter Brothers were to be paid a certain percentage of such costs, if such costs amounted to certain sums stated in said contract, and a stipulated sum, if such costs amounted to some other sums stipulated in said contract, as the said Karl Hoffman and George W. Belvin then and there well knew; that the said George W. Belvin was employed by the said Porter Brothers as a fireman and the said Karl Hoffman was employed by the said Porter Brothers and was known as a division time-keeper in said construction work; that the said George W. Belvin, as such fireman, was entitled to compensation as such fireman at the rate of forty-two cents per hour; that the said Porter Brothers did, at the time and place aforesaid, pay to certain persons in their employ, designated as engineers, the sum of seventy-two and one-half cents per hour; that the said Karl Hoffman and George W. Belvin unlawfully and feloniously agreed that the said George W. Belvin should be falsely and fraudulently carried upon the pay rolls of the said Porter Brothers as an engineer, though performing the services of a fireman and entitled to only a fireman's compensation, and receive compensation of seventy-two and one-half cents per hour, and that, thereafter, to-wit, on the tenth day of June, A.D. 1918, in the County of Norfolk aforesaid, and within the jurisdiction of this Court, in pursuance of the said unlawful and felonious conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Karl Hoffman unlawfully and feloniously approved, initialed, and authenticated for entry upon the pay rolls of the said Porter Brothers a certain time card in the name of George W. Belvin, wherein and whereon the said George W. Belvin was designated as an engineer; and thereafter the said George W. Belvin, in pursuance of and in accordance with the said time card, was entered upon the pay rolls of the said Porter Brothers as an engineer; and the said Porter Brothers, through their duly authorized officers and employes, issued in the name of George W. Belvin a check and voucher for payment to the said George

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W. Belvin for compensation as an engineer, whereas, in truth and in fact, the said George W. Belvin was not an engineer but a fireman, as he, the said Karl Hoffman then and there well knew, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

**RICHARD H. MANN,
U. S. Attorney.**

Witness:

L. L. Williams.

FORM NO. 79

Demurrer to Indictment.

Belvin v. United States, 260 Fed. 455 (C. C. A. 4th Cir.).

(Title of Cause.)

The defendant, George W. Belvin, says that the said indictment is not sufficient in law, and assigns the following as his grounds of demurrer :—

1. That the said indictment does not charge the violation of any statute of the United States.
2. That the said indictment is vague and indefinite and does not set forth sufficient facts to enable the defendant to properly assert his defense.

**DANIEL COLEMAN,
P. D.**

I hereby certify that this demurrer is filed in good faith and not for the purpose of delay.

**DANIEL COLEMAN,
P. D.**

FORM NO. 80

Order on Trial.

Belvin v. United States, 260 Fed. 455 (C. C. A. 4th Cir.).

(Title of Cause.)

This day came the United States by their attorney and the defendants appeared in discharge of their recognizance. Thereupon the defendant George W. Belvin demurred to the indictment

and the same being fully argued was overruled by the Court, to which ruling the defendant excepted.

Whereupon the said defendant, George W. Belvin, moved the Court for a continuance of the case on the ground of the absence of material witnesses, and filed an affidavit in support thereof, and the said motion being fully argued, was overruled by the Court, to which ruling the defendant excepted. Thereupon the said defendant, George W. Belvin, moved for a severance of trial of the defendants in this case, which motion being fully argued, was overruled by the Court, to which ruling the defendant excepted.

Thereupon the defendants being arraigned, the said Karl Hoffman plead guilty, and the said defendant, George W. Belvin, plead not guilty, in the manner and form as charged against them in the indictment and the Court proceeded in the trial of the said George W. Belvin. A panel of twenty-eight jurors, duly drawn, and summoned by the Marshal, and in attendance upon the Court, were examined by the Court; whereupon the defendant, George W. Belvin, by his counsel, challenged the array upon the ground that the said jurors were not duly drawn, summoned, empaneled and sworn, which challenge was overruled by the Court, and the said jurors found qualified to serve according to law. Thereupon the Government and the accused respectively struck from the panel six and ten of said jurors, to wit: — A. S. Woodhouse, W. H. Sterling, C. L. Young, Corbin G. Waller, John W. Barrick, W. E. Crismond, R. P. Bunting, Geo. M. Pollard, D. B. Blackwood, W. G. Singleton, J. Frank Bowman, David Carpenter, J. A. Lacey, Wm. M. Jones, W. C. Willcox and B. H. Herndon, leaving the following twelve against whom there were no objections, to-wit: — James Smith, John E. Donlan, D. H. Olmstead, John M. Drewry, E. W. McGann, B. W. Shelton, Charles Spottswood, Appleton Smith, C. R. Thomas, C. H. Sullivan, B. M. Diggs, and C. A. Woodard, who were duly sworn the truth of and upon the premises to speak, and at the conclusion of the evidence for the Government, the said defendant George W. Belvin, by his counsel, moved the Court to direct a verdict for the defendant, which motion being fully argued, was overruled, and at the conclusion of all the evidence the defendant, George W. Belvin,

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again moved the Court to direct a verdict for the defendant, which motion was overruled, to both of which rulings the defendant excepted, and thereupon the jury was adjourned until Monday morning at 10:30 o'clock.

FORM NO. 81

Order on Trial, Verdict, Etc.

Belvin v. United States, 260 Fed. 455 (C. C. A. 4th Cir.).

(Title of Cause.)

This day came again the United States by their attorney and the defendant George W. Belvin appeared in discharge of his recognizance. The jury appeared in Court pursuant to their adjournment on Saturday, and after receiving the charge of the Court, to which charge and every part, and each paragraph thereof, the said defendant duly excepted and having heard the arguments of counsel, the jury retired to their room and after some time returned into Court and upon their oaths do say, "We, the jury, find the defendant guilty as charged in the within Indictment this 25th day of November, 1918. E. W. McGann, Foreman." Thereupon the said defendant George W. Belvin, by his counsel, moved the Court to set aside the verdict and grant him a new trial, upon the ground that the same was contrary to the law and the evidence, for errors appearing upon the face of the record, and other grounds to be set forth in writing and filed herein, which motion being fully argued was overruled by the Court, to which ruling the defendant excepted. And it being demanded of the said defendants, that if anything they had or knew to say, why the Court should not now proceed to pronounce judgment against them according to law, and nothing further being offered or alleged in delay thereof, it is considered by the Court that the said George W. Belvin be imprisoned in the West Virginia Penitentiary at Moundsville, West Virginia, for the period of eighteen months, and that the said Karl Hoffman be confined in the jail of the City of Norfolk, Virginia, for the period of thirty days, and fined the sum of \$500.00 without costs.

And the said defendant, George W. Belvin, having indicated his intention to apply for a writ of error and supersedeas of and to the

APPEAL ORDERS

[FORM 82]

judgment complained of, the Court doth allow him ten days within which to prepare and file his Bills of Exception.

Thereupon the said defendant, George W. Belvin, and William A. Belvin, his surety, each acknowledged themselves indebted unto the United States of America, in the sum of \$3,000.00, of their goods and chattels, lands and tenements, to be levied and to the use of the United States rendered, upon the condition that the said George W. Belvin shall be and appear in this Court on the first Monday of May, 1919, to answer the judgment of this Court, or any appellate Court to which this case may proceed, and not to depart hence without the leave of the Court.

And thereupon the said defendant, Karl Hoffman, was remanded to the custody of the Marshal of this District.

FORM NO. 82

Order Extending the Time to File Bill of Exceptions.

Belvin v. United States, 260 Fed. 455 (C. C. A. 4th Cir.).

(Title of Cause.)

For reasons appearing to the Court, it is ordered that the time allowed the defendant, Belvin, within which to file his Bill of Exceptions in this case, be and the same is hereby extended for the period of ten days from this date.

December 4, 1918.

EDMUND WADDILL, JR.,
U. S. District Judge.

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December 4, 1918.

EDMUND WADDILL, JR.,
U. S. District Judge.

GROUP VII

ESPIONAGE ACT

- No. 83. Indictment — Violation of Act of June 15, 1917.
- No. 84. Motion to Quash.
- No. 85. Arraignment and Plea of Not Guilty.
- No. 86. Open Court Recognizance.
- No. 87. Charge of the Court — Conspiracy to Violate Espionage Law.

FORM NO. 83

Indictment — Violation of Act of June 15, 1917

Sustained in Form, but Reversed for Insufficient Evidence in
Kammann v. United States, 259 Fed. 192 (C. C. A. 7th Cir.).

The United States

v.

Charles H. Kammann.

Be it remembered that heretofore to wit: on the 30th day of April in the year of our Lord one thousand nine hundred and eighteen, that being one of the days of the April Term A.D. 1918 of the District Court of the United States for the Northern Division of the Southern District of Illinois, the grand jurors of the United States of America, chosen, selected and sworn within and for the Northern Division of the Southern District of Illinois, came into open court and presented an Indictment against one Charles H. Kammann, for "Violation of the Act of June 15th, 1917", which said indictment was signed by the District Attorney and indorsed by the Foreman of said Grand Jury as a True Bill, and was and is in the words and figures, following, to wit:—

United States of America }
Southern District of Illinois } ss.
Northern Division }

INDICTMENT — VIOLATION OF ACT OF JUNE 15, 1917 [FORM 83]

In the District Court of the United States in and for the Southern District, at the April term thereof A.D. 1918.

The Grand Jurors of the United States impaneled, sworn and charged at the term aforesaid, of the Court aforesaid on their oath present that Charles H. Kammann at Peoria, in the County of Peoria, in the State of Illinois, in the Northern Division of the Southern District aforesaid and within the jurisdiction of said Court on to wit, the fifth day of December, A.D. 1917 and at a time when the United States of America was at war with the Imperial German Government, with intent to interfere with operation and success of the military and naval forces of the said United States, and to promote the success of its said enemy, did then and there unlawfully, willfully and falsely state to and in the presence and hearing of a certain large class of pupils in history at a certain public school, to wit; Lincoln School, in Peoria aforesaid; that it is all nonsense, to talk about getting the Kaiser; we might just as well talk about getting the President; that the Kaiser did not cause this war; that the killing of the Prince and Princess in Servia caused the war; that Russia and Servia had the plans all made for the killing of this Prince; and that if we had stayed off the sea we would not have gotten into this war, against the peace and dignity of the United States of America and contrary to the form of the statute of the same in such case made and provided.

Second Count

And the Grand Jurors aforesaid on their oaths aforesaid, do further present that Charles H. Kammann on to wit; the fifth day of December 1917 at to wit; Peoria, County of Peoria in the State of Illinois, in the Northern Division of the Southern District aforesaid and within the jurisdiction of this Court, on to wit; the 5th day of December, 1917; and a time when the United States of America was at war with the Imperial German Government, with intent to interfere with the operation of military and naval forces of the United States and to promote the success of its said enemy, did then and there unlawfully, willfully and falsely state to and in the presence and hearing of a certain large class of pupils in history at a certain public school, to wit; Lincoln School,

in Peoria aforesaid; that the papers and people was saying, "Get the Kaiser", that they had just as well say, get the President, that the Kaiser was not to blame for the war; and that he could take no action without the vote of the Reichstag, against the peace and dignity of the United States of America, and contrary to the form of the statute of the same in such case made and provided.

Third Count

And the Grand Jurors aforesaid, on their oaths aforesaid, do further present that Charles H. Kammann, at Peoria, County of Peoria, in the State of Illinois, in the Northern Division of the Southern District aforesaid, and within the jurisdiction of this Court, on, to wit, the fifth day of December, 1917; and at a time when the United States of America was at war with the Imperial German Government, with intent to interfere with the operation and success of the military and naval forces of the United States and to promote the success of its said enemy, did then and there, unlawfully, willfully and falsely state to and in the presence and hearing of a certain large class of pupils in history, at a certain public school, to wit, Lincoln School, in Peoria aforesaid, that the Allies pulled Germany into the war and that we should not have sent ammunition and other materials over to the Allies, that if we had not done so, we could have kept out of the war, that our sending munitions over there got Germany mad and for that reason she went to sinking our ships and this brought us into the war; against the peace and dignity of the United States of America, and contrary to the form of the Statute of the same in such case made and provided.

Fourth Count

And the grand jurors aforesaid, on their oaths aforesaid, do further present that Charles H. Kammann, on, to wit, the fifth day of December, A.D. 1917, at Peoria, in the County of Peoria, in the State of Illinois, in the Northern Division of the Southern District aforesaid, and within the jurisdiction of this Court, and at a time when the United States of America was at war with the Imperial German Government, with intent to interfere with the operation and success of the military and naval forces of the

INDICTMENT — VIOLATION OF ACT OF JUNE 15, 1917 [FORM 83]

United States and to promote the success of its said enemy, did then and there, unlawfully, willfully, and falsely state to and in the presence and hearing of a certain large class of pupils in History, at a certain public school, to wit; Lincoln School, in Peoria aforesaid, that General Lee said he could defeat the Federal Army if the Germans were out of it, that if the Germans in this country had known that this country was to declare war against Germany, that the Germans would have done differently in the Civil War, and that the Germans in this war would use their submarines and not half of our troops would get over to France, and that England was jealous of Germany's navy, and started the war, against the peace and dignity of the United States of America, and contrary to the form of the Statute of the same in such case made and provided.

Fifth Count

And the grand jurors aforesaid, on their oaths aforesaid, do further present that Charles H. Kammann, at Peoria, in the County of Peoria, in the State of Illinois, in the Northern Division of the Southern District of Illinois, aforesaid, and within the jurisdiction of this Court, on, to wit, the fifth day of December, A.D. 1917, and at a time when the United States of America was at war with the Imperial German Government, with intent to interfere with the operation and success of the said military and naval forces of the United States, and to promote the success of its said enemy, did then and there, unlawfully, willfully, and falsely, state to, and in the presence and hearing of a certain large class of pupils in History, at a certain public school, to wit, Lincoln School, in Peoria aforesaid, that it was nonsense for us to get into this war, that we cannot whip Germany unless we starve them out, and that England cannot keep on with the war because she does not raise enough supplies, against the peace and dignity of the United States of America, and contrary to the form of the Statute of the same in such case made and provided.

Sixth Count

And the grand jurors aforesaid, on their oaths aforesaid, do further present that Charles H. Kammann, at Peoria, in the

County of Peoria, in the State of Illinois, in the Northern Division of the Southern District of Illinois, and within the jurisdiction of this Court, on, to wit, the fifth day of December, A.D. 1917, and at a time when the United States of America was at war with the Imperial German Government, with intent to interfere with the operation and success of the military and naval forces of the United States, and to promote the success of its said enemy, did then and there, unlawfully, willfully, and falsely, state to, and in the presence and hearing of, a certain large class of pupils in History, at a certain public school, to wit, Lincoln School, in Peoria aforesaid, that the Allies could not defeat Germany unless they starve the Germans out, and that it would have been better if we had stayed out of the war, against the peace and dignity of the United States of America, and contrary to the form of the Statute of the same in such case made and provided.

Seventh Count

And the grand jurors aforesaid, on their oaths aforesaid, do further present that Charles H. Kammann, at Peoria, in the County of Peoria, in the State of Illinois, in the Northern Division of the Southern District of Illinois, and within the jurisdiction of this Court, on, to wit, the fifth day of December, A.D. 1917, and at a time when the United States of America was at war with the Imperial German Government, with intent to interfere with the operation and success of the military and naval forces of the United States, unlawfully, willfully, and falsely, state to, and in the presence and hearing of, a certain large class of pupils in History, at a certain public school, to wit, Lincoln School, in Peoria aforesaid, that the German Government is a free Government like ours, having a Kaiser corresponding to our President, and a legislature corresponding to our Congress, against the peace and dignity of the United States of America, and contrary to the form of the Statute of the same in such case made and provided.

Eighth Count

And the grand jurors aforesaid, on their oath aforesaid, do further present that Charles H. Kammann, at Peoria, in the

INDICTMENT — VIOLATION OF ACT OF JUNE 15, 1917 [FORM 83

County of Peoria, in the State of Illinois, in the Northern Division of the Southern District of Illinois, and within the jurisdiction of this Court, on, to wit, the fifth day of December, A.D. 1917, and at a time when the United States of America was at war with the Imperial German Government, with intent to interfere with the operation and success of the military and naval forces of the United States, and to promote the success of its said enemy, did then and there, unlawfully, willfully, and falsely, state to, and in the presence and hearing of, a certain large class of pupils in History, at a certain public school, to wit, Lincoln School, in Peoria aforesaid, that Germany has no fear of any war we can wage against her; she only fears a lack of food, and that we had no business getting into the war; that as long as we send supplies over, the war will continue, that our furnishing supplies to the Allies got us into the war, and that the Kaiser could not do anything without the vote of the Reichstag, against the peace and dignity of the United States of America, and contrary to the form of the Statute of the same in such case made and provided.

Ninth Count

And the grand jurors aforesaid, on their oaths aforesaid, do further present that Charles H. Kammann, at Peoria, in the County of Peoria, in the State of Illinois, in the Northern Division of the Southern District of Illinois, and within the jurisdiction of this Court, on, to wit, the fifth day of December, A.D. 1917, and at a time when the United States of America was at war with the Imperial German Government, with intent to interfere with the operation and success of the military and naval forces of the United States, and to promote the success of its said enemy, did then and there, unlawfully, willfully, and falsely, state to, and in the presence and hearing of, a certain large class of pupils in History, at a certain public school, to wit, Lincoln School, in Peoria aforesaid, that the German children learn better than the American children, and that the Germans helped the North in the Civil War, and we ought to stand by Germany now, that we cannot whip Germany unless we shut off her food supply, and that we should not have gone into the war with the Allies, we should have gone in with Germany, for Germany had helped

us in the Civil War, against the peace and dignity of the United States of America, and contrary to the form of the Statute of the same in such case made and provided.

Tenth Count

And the grand jurors aforesaid, on their oaths aforesaid, do further present that Charles H. Kammann, on, to wit, the fifth day of December, A.D. 1917, at Peoria, in the County of Peoria, in the State of Illinois, in the Northern Division of the Southern District of Illinois, and within the jurisdiction of this Court, and at a time when the United States of America was at war with the Imperial German Government, did then and there, unlawfully, willfully and falsely state to, and in the presence and hearing of, a certain large class of pupils in History, at a certain public school, to wit, Lincoln School, in Peoria aforesaid, that it is all nonsense, to talk about getting the Kaiser; we might as well talk about getting the President; that the Kaiser did not cause this war; that the killing of the Prince and Princess in Servia caused the war; that Russia and Servia had the plans all made for the killing of this Prince; and that if we had stayed off the sea we would not have gotten into this war, and did, thereby then and there, unlawfully, and willfully attempt to cause insubordination, disloyalty, mutiny, and refusal of duty in the military and naval forces of the United States, against the peace and dignity of the United States of America and contrary to the form of the statute of the same in such case made and provided.

Eleventh Count

And the grand jurors aforesaid, on their oaths aforesaid, do further present that Charles H. Kammann, on, to-wit, the fifth day of December, A.D. 1917, at Peoria, in the County of Peoria, in the State of Illinois, in the Northern Division of the Southern District aforesaid, and within the jurisdiction of this Court, and at a time when the United States of America was at war with the Imperial German Government, did then and there, unlawfully, willfully and falsely state to and in the presence and hearing of, a certain large class of pupils in History at a certain public school, to wit, Lincoln School, in Peoria aforesaid; that the

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papers and people were saying, Get the Kaiser, that they had just as well say, Get the President, that the Kaiser was not to blame for the war, and that he could take no action without the vote of the Reichstag, and did hereby, then and there, unlawfully and willfully attempt to cause insubordination, disloyalty, mutiny and refusal of duty in the military and naval forces of the United States, against the peace and dignity of the United States of America, and contrary to the form of the Statute of the same, in such case made and provided.

Twelfth Count

And the grand jurors aforesaid, on their oaths aforesaid, do further present that Charles H. Kammann, on, to wit, the fifth day of December, A.D. 1917, at Peoria, in the County of Peoria, in the State of Illinois, in the Northern Division of the Southern District aforesaid, and within the jurisdiction of this Court, and at a time when the United States of America was at war with the Imperial German Government, did then and there, unlawfully, willfully and falsely state to, and in the presence and hearing of, a certain large class of pupils in History at a certain public school, to wit, Lincoln School, in Peoria aforesaid, that the Allies pulled Germany into the war and that we should not have sent ammunition and other materials over to the Allies, that if we had not done so we could have kept out of the war, that our sending munitions over there got Germany mad and for that reason she went to sinking our ships, and this brought us into the war, and did thereby, then and there, unlawfully and willfully attempt to cause insubordination, disloyalty, mutiny and refusal of duty in the military and naval forces of the United States, against the peace and dignity of the United States of America, and contrary to the form of the Statute of the same, in such case made and provided.

Thirteenth Count

And the grand jurors aforesaid, on their oaths aforesaid, do further present that Charles H. Kammann, on, to wit, the fifth day of December, A.D. 1917, at Peoria, in the County of Peoria, in the State of Illinois, in the Northern Division of the Southern

District aforesaid, and within the jurisdiction of this Court, and at a time when the United States of America was at war with the Imperial German Government, did then and there, unlawfully, willfully and falsely state to, and in the presence and hearing of, a certain large class of pupils in History, at a certain public school, to wit, Lincoln School, in Peoria aforesaid, that General Lee said he could defeat the Federal Army if the Germans were out of it, that if the Germans in this country had known that this country was to declare war against Germany, that the Germans would have done differently in the Civil War, and that the Germans in this war would use their submarines and not half of our troops would get over to France, and that England was jealous of Germany's navy, and started the war, and did thereby, then and there, unlawfully, and willfully attempt to cause insubordination, disloyalty, mutiny and refusal of duty in the military and naval forces of the United States, against the peace and dignity of the United States of America, and contrary to the form of the Statute of the same, in such case made and provided.

Fourteenth Count

And the grand jurors aforesaid, on their oaths aforesaid, do further present that Charles H. Kammann, on, to wit, the fifth day of December, A.D. 1917, at Peoria, in the County of Peoria, in the State of Illinois, in the Northern Division of the Southern District aforesaid, and within the jurisdiction of this Court, and at a time when the United States of America was at war with the Imperial German Government, did then and there, unlawfully, willfully and falsely, state to, and in the presence and hearing of, a certain large class of pupils in History, at a certain public school, to wit, Lincoln School, in Peoria aforesaid, that it was nonsense for us to get into this war, that we cannot whip Germany unless we starve them out, and that England cannot keep on with the war because she does not raise enough supplies, and did thereby, then and there, unlawfully and willfully, attempt to cause insubordination, disloyalty, mutiny and refusal of duty in the military and naval forces of the United States, against the peace and dignity of the United States of America, and contrary to the form of the Statute in such case made and provided.

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Fifteenth Count

And the grand jurors aforesaid, on their oaths aforesaid, do further present that Charles H. Kammann, at Peoria, in the County of Peoria, in the State of Illinois, in the Northern Division of the Southern District of Illinois, and within the jurisdiction of this Court, on, to wit, the fifth day of December, A.D. 1917, and at a time when the United States of America was at war with the Imperial German Government, did then and there, unlawfully, willfully and falsely, state to, and in the presence and hearing of, a certain large class of pupils in History, at a certain public school, to wit, Lincoln School, in Peoria aforesaid, that the Allies could not defeat Germany, unless they starve the Germans out, and that it would have been better if we had stayed out of the war, and did thereby, then and there, unlawfully and willfully attempt to cause insubordination, disloyalty, mutiny and refusal of duty in the military and naval forces of the United States against the peace and dignity of the United States of America and contrary to the form of the Statute of the same in such case made and provided.

Sixteenth Count

And the grand jurors aforesaid, on their oaths aforesaid, do further present that Charles H. Kammann, at Peoria, in the County of Peoria, in the State of Illinois, in the Northern Division of the Southern District of Illinois, and within the jurisdiction of this Court, on, to wit, the fifth day of December, A.D. 1917, and at a time when the United States of America was at war with the Imperial German Government, did then and there, unlawfully, willfully, and falsely, state to, and in the presence and hearing of, a certain large class of pupils in History, at a certain public school, to wit, Lincoln School, in Peoria aforesaid, that the German Government is a free Government like ours, having a Kaiser corresponding to our President, and a Legislature corresponding to our Congress, and did thereby, then and there, unlawfully and willfully, attempt to cause insubordination, disloyalty, mutiny and refusal of duty in the military and naval forces of the United States, against the peace and dignity of the United

States of America, and contrary to the form of the Statute of the same, in such case made and provided.

Seventeenth Count

And the grand jurors aforesaid, on their oath aforesaid, do further present that Charles H. Kammann, at Peoria, in the County of Peoria, in the State of Illinois, in the Northern Division of the Southern District of Illinois, and within the jurisdiction of this Court, on, to wit, the fifth day of December, A.D. 1917, and at a time when the United States of America was at war with the Imperial German Government, did then and there, unlawfully, willfully and falsely, state to, and in the presence and hearing of, a certain large class of pupils in History, at a certain public school, to wit, Lincoln School, in Peoria aforesaid, that Germany has no fear of any war we can wage against her; that she only fears a lack of food, and that we had no business getting into the war; that as long as we send supplies over, the war will continue, that our furnishing supplies to the Allies got us into the war, and that the Kaiser could not do anything without the vote of the Reichstag, and did thereby, then and there, unlawfully and willfully, attempt to cause insubordination, disloyalty, mutiny and refusal of duty in the military and naval forces of the United States, against the peace and dignity of the United States of America, and contrary to the form of the Statute of the same, in such case made and provided.

Eighteenth Count

And the grand jurors aforesaid, on their oaths aforesaid, do further present that Charles H. Kammann, at Peoria, in the County of Peoria, in the State of Illinois, in the Northern Division of the Southern District of Illinois, and within the jurisdiction of this Court, on, to wit, the fifth day of December, A.D. 1917, and at a time when the United States of America was at war with the Imperial German Government, did then and there, unlawfully, willfully and falsely, state to, and in the presence and hearing of, a certain large class of pupils in History, at a certain public school, to wit, Lincoln School, in Peoria aforesaid, that the German children learn better than the American children, and that

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the Germans helped the North in the Civil War, and we ought to stand by Germany now, that we cannot whip Germany unless we shut off her food supply, and that we should not have gone into the war with the Allies, we should have gone in with Germany, for Germany had helped us in the Civil War, and did thereby, then and there, unlawfully and willfully, attempt to cause insubordination, disloyalty, mutiny, and refusal of duty in the military and naval forces of the United States, against the peace and dignity of the United States of America, and contrary to the form of the Statute of the same, in such case made and provided.

Nineteenth Count

And the grand jurors, aforesaid, on their oaths aforesaid, do further present that Charles H. Kammann, at Peoria, in the County of Peoria, in the State of Illinois, in the Northern Division of the Southern District of Illinois, and within the jurisdiction of this Court, on, to wit, the fifth day of December, A.D. 1917, and at a time when the United States of America was at war with the Imperial German Government, did then and there, unlawfully, willfully and falsely state to and in the presence and hearing of divers persons there being, that General Lee said if the Germans should be taken out of the Northern Army, he could whip the Yankee in a few days, and that the Allies can never whip Germany, unless they starve them out, and it would have been better for us to stay out of the war; that if the Germans in this country had known that this country was to declare this war against Germany, the Germans would have done differently in the Civil War; and that under the submarine attack, not half of our troops would get over to Europe; that over half of the Union Army in the Civil War was made up of Germans, and that everybody was of his opinion as to who will win the war; that the Kaiser was not to blame for the war, and that the Kaiser could not start the war, or do anything, without the vote of the Reichstag, and if Germany had not helped us in the Revolutionary War, we would have been defeated; that it was all nonsense to talk about getting the Kaiser, we had just as well talk about getting the President of the United States, and that we had no more right to kill the Kaiser than to kill the President of the United States;

that Germany helped the North during the Civil War and we should stand by Germany now, and that we should not have gone into this war with the Allies, but that we should have gone into the war with Germany, in return for the aid rendered us by Germany in the Civil War; that the German Government is as free as the United States, and that the Kaiser has not as much power as the President of the United States; that many of our troops have not been heard from, and that they may be at the bottom of the ocean; that Russia and Servia had plans all made for the killing of the Prince and Princess which caused the war; that we should have stayed off of the sea and we would not have gotten into the war; and that the Allies pulled Germany into the war, that we should not have sent munitions over there to the Allies, and if we had not done this we could have kept out of the war, and that our sending munitions over there caused Germany to be angry and for that reason, she went to sinking our ships; that Germany would have the war won, if we had stayed out of it; and that England could not keep on with the war because England does not raise enough supplies, and that Germany does not fear all the war we could wage against her; and that the United States could have bought the patent of a submarine for five hundred dollars, but our officers did not understand its value, and it was purchased by Germany, and that the German children knew more than American children, and that the Russians are no good as an army, and did thereby, then and there, unlawfully and willfully, attempt to cause insubordination, disloyalty, mutiny, and refusal of duty in the military and naval forces of the United States, against the peace and dignity of the United States of America, and contrary to the form of the Statute of the same, in such case made and provided.

Twentieth Count

And the grand jurors aforesaid, on their oaths aforesaid, do further present that Charles H. Kammann, at Peoria, in the County of Peoria, in the State of Illinois, in the Northern Division of the Southern District of Illinois, and within the jurisdiction of this Court, on, to wit, the fifth day of December, A.D. 1917, and at a time when the United States of America was at war with

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the Imperial German Government, with intent to interfere with the operation and success of the military and naval forces of the United States, and to promote the success of its said enemy, did then and there, unlawfully, willfully, and falsely, state to and in the presence and hearing of divers persons there being, that General Lee said if the Germans should be taken out of the Northern Army, he could whip the Yankee in a few days, and that the Allies can never whip Germany, unless they starve them out, and it would have been better for us to stay out of the war; that if the Germans in this country had known that this country was to declare this war against Germany, the Germans would have done differently in the Civil War; and that under the submarine attack, not half of our troops would get over to Europe; that over half of the Union Army in the Civil War was made up of Germans, and that everybody was of his opinion as to who will win the war; that the Kaiser was not to blame for the war, and that the Kaiser could not start the war, or do anything, without the vote of the Reichstag, and if Germany had not helped us in the Revolutionary War, we would have been defeated; and that it was all nonsense to talk about getting the Kaiser, we had just as well talk about getting the President of the United States, and that we had no more right to kill the Kaiser than to kill the President of the United States; that Germany helped the North during the Civil War and we should stand by Germany now, and that we should not have gone into this war with the Allies, but that we should have gone into the war with Germany, in return for the aid rendered us by Germany in the Civil War; that the German Government is as free as the United States, and that the Kaiser has not as much power as the President of the United States; that many of our troops have not been heard from, and that they may be at the bottom of the ocean; that Russia and Servia had plans all made for the killing of the Prince and Princess which caused the war; that we should have stayed off of the sea and we would not have gotten into the war; and that the Allies pulled Germany into the war, that we should not have sent munitions over there to the Allies, and if we had not done this we could have kept out of the war, and that our sending munitions over there caused Germany to be angry and for that reason, she went to sinking

our ships; that Germany would have the war won, if we had stayed out of it, and that England could not keep on with the war because England does not raise enough supplies, and that Germany does not fear all the war we could wage against her; that the United States could have bought the patent of a submarine for five hundred dollars, but our officers did not understand its value, and it was purchased by Germany, and that the German children knew more than American children, and that the Russians are no good as an army, against the peace and dignity of the United States of America, and contrary to the form of the Statute of the same in such case made and provided.

EDWARD C. KNOTTS,
United States Attorney.

Indorsed A True Bill. A. B. Debord, Foreman Grand Jury.
Filed April 30th 1918. R. C. Brown, Clerk.

FORM NO. 84

Motion to Quash.

Kammann *v.* United States, 259 Fed. 192 (C. C. A. 7th Cir.).

DISTRICT COURT OF THE UNITED STATES

Southern District of Illinois

Northern Division

The United States }
 v. }
Charles H. Kammann. }

And now comes the defendant herein by Dailey, Miller, McCormick & Radley, his attorneys, and says that the indictment herein, and each and every count therein, are not sufficient in the law to require the defendant to plead thereto, and this defendant moves the Court to quash the indictment and each and every count thereof, and for special reasons, shows unto the Court the following:—

1). — It is not stated in any count of said indictment that the statements charged against the defendant injured, or were intended to injure the service of the United States, or The United States.

2). — The statements charged against the defendant in the first nine counts and in the twentieth count are merely statements of opinion and could not interfere with or have been intended to interfere with the operation and success of the military and naval forces of The United States, or promote the success of its enemy.

3). — The statements charged against the defendant in the tenth, eleventh, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, and nineteenth counts of said indictment are mere statements of opinion and could not possibly have caused or been intended to cause insubordination, disloyalty, mutiny, and refusal of duty in the military and naval forces of The United States.

4). — Other reasons.

DAILEY, MILLER, McCORMICK & RADLEY,
Atty's. for Defendant.

FORM NO. 85

Arraignment and Plea of Not Guilty.

Kammann v. United States, 259 Fed. 192 (C. C. A. 7th Cir.).

The United States } No. 972. Indictment.
v. } Violation of Act of June 15th, 1917.
Charles H. Kammann. }

And now on this 1st day of May, A.D. 1918 comes the United States the plaintiff in this case by Edward C. Knotts, Esq., United States Attorney for the Southern District of Illinois and comes also the defendant Charles H. Kammann, in person and by R. H. Radley, Esq., and John Dailey, Esq., his attorneys. And the said defendant being arraigned on the Indictment herein for plea thereto says that he is not guilty as therein charged.

FORM NO. 86

Open Court Recognizance.

Kammann v. United States, 259 Fed. 192 (C. C. A. 7th Cir.).

The United States } No. 972. Indictment.
v. } Violation of Act of June 15th, 1917.
Charles H. Kammann. }

And now on this 1st day of May, A.D. 1918, comes the United States the plaintiff in this case by Edward C. Knotts, Esq., United States Attorney for the Southern District of Illinois and comes also the defendant Charles H. Kammann, in person by R. H. Radley, Esq., and John Dailey, Esq., his attorneys and upon motion of the United States Attorney that the Court fix the amount of bail, in this case it is ordered that it be fixed at the sum of Ten Thousand Dollars. Whereupon the defendant offered (here enumerate sureties) as sureties, which were duly accepted by the Court.

FORM NO. 87

Charge of the Court — Conspiracy to Violate Espionage Law.

Goldman, et al. v. United States, 245 U. S. 474.

(Mayer, Julius M., District Judge.)

Gentlemen of the Jury :

It is with real sincerity that I express to you my appreciation of the patience that you have displayed throughout this trial, and of the very close and intelligent attention which you have given to the testimony as it was adduced, and to the summing up of the defendants, and of the counsel for the Government.

It is extremely important to concentrate your minds upon the particular question here involved, arising out of the indictment of these two defendants. They are charged by the Grand Jury with an offense which I shall more technically define later, which in effect is this, that they have knowingly and willfully counselled, abetted and aided persons of the so-called draft age, to violate a statute of the United States, against the peace and dignity of the United States.

Many things, as happens in almost every case, have crept into the case which have a collateral rather than a direct aspect. It was suggested by one of the defendants in his summing up that there had been brought into the case references to anarchism and the Ferrer school and violence, by virtue of the action of the prosecuting attorney. The fact is, as you all know, that those who first mentioned anarchy and anarchism were the defendants

themselves; that the reference to the doctrines of Ferrer were elicited by questions put by them, and that these matters came into the case in great measure because of a question of credibility, to which I shall later with some particularity refer.

This is not a trial of political principles. This cannot be turned into a political or State trial in the political sense. You are not to be misled by any effort to digress your mind from the real issue, which simply is, whether these defendants are guilty or not guilty of the crime charged in the indictment.

This is not a question of free speech. Free speech is guaranteed to us under the constitution. No American worthy of the name believes in else than free speech; but free speech means, not license, not counseling disobedience of the law. Free speech means that frank, free, full and orderly expression which every man or woman in the land, citizen or alien, may engage in, in lawful and orderly fashion; and that free speech is guaranteed to us, and no court would deny it to anyone.

Prior to the enactment of the so-called selective service law, aptly designated such by the President, on the 18th day of May 1917, any person could discuss in the fullest manner possible the provisions of pending legislation, and any person in discussing that legislation could use even the most vehement language and present any and all arguments that seemed to him or to her best; but when that discussion became embodied into law, then it became the duty of every person living under this Government to obey that law. Individual opinion might still be fully expressed, and proper agitation for the repeal of such a law continue; but the law itself thenceforth must be obeyed.

This is a republic founded upon principles of democracy. It can remain a republic only so long as the law is obeyed. Obedience to the law is the fundamental basis of American life. Once that basis disappears or is destroyed, the whole fabric is destroyed, and the foundation upon which a Government of free men rests, disappears.

What was the method which the framers of the Constitution devised with an extraordinary and prophetic foresight? They had just won their freedom after long years of struggle, and they realized that the republic which they were founding must rest

upon law, that that law must be the expression of the will of the people, through duly organized methods, and through orderly channels. They devised a system which has stood the test now of well beyond a century. It was a system that was to record not merely the passing will of the majority, but it was a system that would be fair to the minority; and therefore, with the greatest measure of care, they devised what the political philosophers have called a system of checks and balances, by which they made the three great departments of government independent of each other. A law cannot become a law by the mere passage of the Act of Congress. Before it becomes a law it must have the approval of the second branch of the government, the Executive. And even then, if the Constitution has been violated, or has not been accorded with, any person in the land has the opportunity, in lawful fashion, of attacking that law; and the Courts have the power to declare it unconstitutional. And the courts have so declared on many occasions, fearlessly and courageously, laws enacted in the passing passion of the day, to be unconstitutional.

So that you see we have a very elaborate and a very careful system by which before any thought becomes concreted into law, that law is subject to discussion in and outside the halls of Congress, and must then have the approval of the Executive, and must then stand the test of an appropriate court inquiry.

With such an elaborate system in the minds and known to Congress, Congress enacted this Section 37 of the United States Criminal Code, phrased in very simple language, that any man may understand, that if two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner, or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to that conspiracy shall be fined not more than Ten Thousand Dollars (\$10,000) or imprisoned not more than two years, or both.

On the 18th day of May, 1917, this so-called selective service act became a law. That act provided for a general and comprehensive scheme for calling upon men between twenty-one and thirty years of age, to serve wherever the Government might

assign them, whether in the Army or in the Navy, or in industrial or in agricultural pursuits. It was passed, as you know, after elaborate discussion, and when passed, under our system of representative government, it represented the will of the people under our system, and became the law.

Now, as a necessary part of that whole scheme of law, and as a section of that statute, not a separate statute, but a part of the whole scheme, Congress of course saw the need of having a register of those who became or would be within those ages that I have referred to. It was necessary to find out the name and address of every person throughout the country between the ages of twenty-one and thirty, so that later, by a further proclamation of the President, a further carrying out of the statute, the Government could determine whom to call upon, and in what capacity; and, as you know, elaborate provisions are to be found in that statute in respect of the exemptions; and all these steps were to the end, from the point of view of Congress, of enacting a statute that would be as equal and as fair as human statutes can be in the carrying out of this important measure which received paramount attention from Congress and the President.

Now what does that Section 5 say? That all male persons between the ages of twenty-one and thirty, both inclusive, shall be subject to registration in accordance with the regulations to be prescribed by the President, and upon the proclamation of the President, or other public notice given by him or by his direction, stating the time and place of such registration, it shall be the duty of all persons of the designated ages, except officers and enlisted men in the regular army, the navy and the National Guard, and the naval militia while in the service of the United States, to present themselves for and submit to registration under the provisions of this act, and that every such person shall be deemed to have notice of the requirements of this act, upon the publication of such a proclamation, or other notice as aforesaid, given by the President, or by his direction; and any person who shall willfully fail or refuse to present himself for registration, or to submit thereto, as herein provided, shall be guilty of a misdemeanor, and on conviction shall be punished as the statute provides.

Now, there is another provision of the United States statutes, known as Section 332, of the United States Criminal Code, which also is simply worded and easy to understand: "Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces or procures its commission, is a principal."

Now, having in mind these three statutes, let us look at the indictment, eliminating from it as much of the purely legal language as is possible: The Grand Jurors of the United States of America, within and for the District aforesaid, on their oaths, present, that on the 18th day of May, 1917, the President of the United States of America duly issued his proclamation, as provided by the Act of Congress, approved May 18th, 1917, to the effect that the time and place of such registration should be between 7 A.M. and 9 P.M. on the 5th day of June, 1917, at the registration place in the precinct wherein those people that register may have their permanent homes; that those who shall have attained their twenty-first birthday, and who shall not have attained their thirty-first birthday on or before the day therein named, are required to register.

So, therefore, on the 18th day of May, by virtue of that Act, it became the duty of every person, citizen or alien, every male person in the United States, to register as the President's proclamation indicated, on the 5th day of June, every person who was between these ages of twenty-one and thirty.

And then the indictment continues: And the Grand Jurors aforesaid, on their oaths aforesaid, do further present that Emma Goldman and Alexander Berkman on the 18th day of May, 1917, and on each and every day thereafter, up to and including the date of the filing of this indictment, at the Southern District of New York, and within the jurisdiction of this Court, unlawfully, willfully, knowingly, and feloniously did conspire together and agree between themselves and with divers other persons whose names are to the Grand Jurors unknown, to commit an offense against the United States, that is to say, said defendants unlawfully, willfully, knowingly and feloniously did conspire together and agree between themselves and with the said divers persons whose names are to the Grand Jury unknown, that divers persons

who were to the Grand Jurors unknown, same being male persons between the ages of twenty-one and thirty, both inclusive, being subject to registration, should knowingly and willfully fail to register, and fail and refuse to present themselves for registration, and submit thereto, as provided by the aforementioned Act of Congress of May 18, 1917. And the Grand Jurors aforesaid, on their oaths aforesaid, do further present that the said defendants, Emma Goldman and Alexander Berkman, unlawfully, willfully, knowingly and feloniously did conspire together and agree between themselves that the said divers persons whose names are to the Grand Jurors unknown, to aid, abet, counsel, command, induce and procure divers persons whose names are to the Grand Jurors unknown, the same being male persons between the ages of twenty-one and thirty, both inclusive, being subject to registration in accordance with the regulations to be prescribed by the President, and upon proclamation by the President, willfully, and so forth, not to register.

And then the indictment proceeds to state thereafter certain overt acts of the defendants.

Now, the crime of conspiracy requires two elements. One is the agreement, the other is the outward act, which in law is spoken of as the overt act. The word conspiracy means a confederation to effect an unlawful object, even by lawful means, or a lawful object by unlawful means.

The essence of conspiracy is the agreement or federation. To constitute a conspiracy, it is not necessary that the two or more persons shall meet together, and enter into an explicit or formal agreement. It is not necessary that they should by direct words, or in writing, state what the unlawful plan, or the unlawful means are to be, nor need they set forth at length the details thereof nor the methods by which the unlawful combination is to be made effective. It is sufficient if two or more persons in any manner, or through the contrivance of either, tacitly come to a mutual understanding to accomplish the thing or unlawful design. Where an unlawful thing is sought to be effected, and two or more persons actuated by the common purpose of accomplishing that thing, work together in any way in furtherance of the unlawful scheme, every one of said persons becomes a member of the conspiracy.

The conspiracy is formed and the foundation of the crime is laid when tacitly or expressly the agreement is entered into to accomplish a result that the law forbids.

The statute, however, requires not only that the actual agreement shall have been made, but that at least one of the parties to said unlawful agreement shall do some act to effect the object of the conspiracy; and therefore to warrant a conviction for conspiracy it must be found, first, that there was the agreement, which was conspiracy, and, second, that at least one of the conspirators performed some act to effectuate the object they had in view.

If that last essential is set forth, then all the persons who made the agreement, or who entered into it, no matter after it was made, are members of the conspiracy, no matter whether they all performed acts to effectuate its object, or whether they each performed all of the acts to effectuate its object.

Now, put into simple language, that means simply this: That two persons may enter into an unlawful agreement, and yet neither of them may ever do anything beyond that; and that is the reason that the law requires that there shall be some outward act, that there need be only one act to constitute the overt act. Many acts may be proved, many acts may not be proved, but if you once conclude that the agreement existed, then one act, whether it is lawful or unlawful in itself, so far as it is in furtherance of the agreement, is sufficient to sustain an indictment for conspiracy, assuming always that these acts and the agreement are proved beyond a reasonable doubt.

You have had such presentation of the testimony, and you have listened to it so closely, that I shall not at this late hour review at any length what you have heard. I shall briefly refer only to certain salient features. What I do not refer to does not mean that I consider that of no importance, but it simply means that I have a desire at this hour merely to give you a very brief outline in so far as it will aid you in understanding the law of the case.

I may say here in passing that, as you well know, the jury is the judge of the facts, and in that domain is supreme, while from the Judge you must take the law, and be guided by his instructions as to the law. I may further say that if anything has been said

by either the counsel for the Government or the defendants, or myself, that does not agree with your recollection as to the testimony, you will take your recollection and not theirs or mine.

On the 9th day of May, 1917, if my recollection is right, there was the first meeting of this No-Conscription League. That was followed by the meeting of May 18th, 1917, at the Harlem River Casino. The Government had a legal right to introduce evidence of that meeting, whether the acts there performed constitute in law an overt act, or not. The Government had the right to lay before you by the testimony of witnesses, what took place at that meeting, in order to disclose the intent of the defendants.

What is in a man's mind is discoverable only by what he says and what he does; and therefore it was entirely proper, as a matter of law, that everything that took place at that meeting should be presented to you.

Since the point was raised this morning as to whether or not the President had affixed his signature to the Act in question at the time that the defendant Emma Goldman was speaking, I have endeavored to ascertain when, as a matter of fact, that law was signed, or that Act was signed by the President, because it has been my purpose to have the trial conducted in strict accordance with law, and as fairly as I knew how. I have been informed by one of the representatives of a newspaper, that word was received by the New York newspapers, or at any rate by his, that the Act became a law at twelve minutes after ten that night.

I have also caused to be inquired by long distance telephone from the State Department, when the Act was signed, and the information from there is not sufficiently clear to enable me to say that it was signed prior to the time that the defendant Emma Goldman was speaking; and therefore, I think it but just to say that that doubt must be resolved in favor of the defendants on the question of whether or not that was an overt act; and I will charge you, therefore, that that was not an overt act within the meaning of the statute, because of the doubt of proof as to the exact time when the Act was signed.

You may, however, consider, as I said before, everything which took place at that meeting, as indicating to you the purpose and

intent of the defendants; and especially in connection with the subsequent acts either by way of meetings, speeches, or writings, which are here in evidence.

Much time was spent in regard to an expression used in that speech, according to the testimony of the two stenographers, or the two patrolmen assigned to stenographic work. What has been suggested or what has been testified to about violence was not germane to the case, and it becomes my duty, therefore, to repeat, perhaps a little more carefully, what I said to you in the course of the trial. The officer Randolph went there, as you know, pursuant to the orders of his superior officer, for the purpose of making an exact stenographic report of what took place at that meeting, — so far as, in any event, Miss Goldman's speech was concerned.

The stenographer Caddell, — Randolph and Caddell not knowing each other were present, — was sent there with a similar view. In determining the credibility of the witnesses, you will apply, of course, the same good common sense that you do in the ordinary affairs of your lives. You may see the manner in which a man testifies, or a woman testifies, you may see how a witness acted upon the stand, you may ask yourselves in respect of these two men, sworn officers of the law, whether or not they would deliberately perjure themselves on the stand, or whether they would insert into their stenographic minutes and their transcript of those minutes, foreign matter utterly different from what was said. The report of Randolph was attacked by the defendants, and thereupon defendants produced certain witnesses to prove that from previous acts of the defendant Emma Goldman, her expressions as to violence had been contrary to that which was reported by Randolph. In addition to that there were read in evidence by the defendants, extracts from various articles. The defendants having introduced this evidence on the credibility of Randolph, this evidence of a collateral character, in addition to the direct evidence of those witnesses who said they had not heard that expression, it became as a matter of law, perfectly sound and proper to then permit the introduction of evidence showing any expressions of opinion upon this subject by either of the defendants, or any facts or circumstances whereby you could or

could not infer, as you deemed best, that one or both of these defendants approved or disapproved certain expressions. It was under these circumstances that the Mother Earth of July 1914 came into the case. That paper being published, as appears from the paper itself, by the defendant Emma Goldman, at a time when the defendant Alexander Berkman was the editor, and a bundle of these papers some three years later being found in the office of the defendant Emma Goldman, it is for you to say on all the evidence in the case, what, as a result of it all, the credibility of the witnesses who were produced is in regard to this particular point. The defendants, as the District Attorney has said, and as they have said, are not on trial for violence, and the matter as I see it now, assumed an amount of importance in time which from my point of view it was not entitled to, although you take your point of view and not mine when I express an opinion of that character.

The real question is whether Randolph and Caddell correctly transcribed the speech of the defendant Emma Goldman, and told the truth in regard to all the speech, and especially in regard to those portions of the speech having to do with registration.

Now we will pass from that to the meeting of May 23rd, held at Miss Goldman's flat, at which the defendant Alexander Berkman presided. You will take the letter, Exhibit L, to the jury room, and in connection with all the facts and circumstances you will determine the meaning of that letter.

The next meeting is the meeting on the eve of registration, the 4th day of June, announced by the handbills to take place at that date. That meeting was held at the Hunt's Point Palace. I am not referring to the details of these meetings, because they have been fully covered, and you are familiar with them, and there is no use taking up your time.

And then, in addition to that, you will recall, and may read, if you so desire, what was published in Mother Earth and what was published in The Blast, and what was said at Forward Hall by one or the other of the defendants, as the case may be.

The expression, "We will defy your laws", or whatever the exact wording was, used at Forward Hall, may be taken as some light upon the intent of the defendants.

Now words are elusive. It is sometimes very difficult to understand a phrase standing by itself, and therefore it is that when you read an article of any character, you should read the context, and if any person has done any acts in connection with that article, you analyze those acts in order to understand what the words mean.

Words are not always direct. Serious things may be accomplished by the use of words subtly and insidiously. A man may not, in so many words, advise, aid or abet another to do an act, yet he may so frame his language that the inference to be derived from it is clear.

In reading the language in regard to how the word "conscription" is used, you have the right to consider the occasion when used, the circumstances when used, and you have a further right in that connection to remember that registration under the Act, is the first necessary step prior to so-called draft or conscription.

Now, you can take all of this matter, and you can determine what the various words mean with the view of ultimately determining whether there was the conspiracy charged, to counsel, aid and abet and so forth, persons to violate the statute; and if you find, outside of the meeting of May 18th, in their speeches, or in the publications known as Mother Earth and The Blast, or in any of the writings or sayings of the defendants subsequent to May 18th, that there was counsel or advice or aiding or abetting other persons to violate the statute in question, and you find that beyond a reasonable doubt, then you will find the defendants guilty; because every one of these writings, and every one of these speeches, made after the 18th of May, was an overt act. And you will remember what I said, that if you once find the agreement to have been made, it is sufficient under the statute that there shall be one overt act.

Every defendant is presumed innocent until a jury finds him or her guilty, beyond a reasonable doubt. If the evidence justifies, in your judgment, that the accused are guilty, so as to exclude every other reasonable conclusion, you should declare them to be guilty. If you can reconcile the evidence before you with any reasonable hypothesis to sustain their innocence, then you will find the defendants not guilty. This old established rule does not

permit you, however, a mere surmise or guess or conjecture that the accused or any of them are possibly innocent. You cannot base your judgment upon a merciful hope, for a reasonable doubt, as the words imply, is only such a doubt as will be entertained by a reasonable man after an impartial and thorough review of all the evidence and all the facts in the case, brought to his attention.

Of course a conspiracy requires two persons, so your verdict must be either that the defendants, both of them, are guilty, or that the defendants, both of them, are not guilty.

I may only say one thing more concerning which, perhaps, there can be little difference of opinion. Whatever may have been the fate of persons of historic note, whether the acts that they did were within or without the law, is quite immaterial in this case. This is a matter of law and order. The law must be obeyed. We are not dealing with a discussion of abstract principles. We are not concerned with the views of the defendants, whether they are right or wrong, on matters foreign to this case. We are only concerned with the evidence in the case. If you believe them guilty beyond a reasonable doubt, it is a matter of no concern to you, nor to the Court, what their views may be. If you believe them not guilty, then equally are we not concerned with their political views.

I repeat in conclusion, and lay it upon you most earnestly, that this is not a trial of free speech. This is an indictment for crime; and the duty which rests upon you is to determine on the evidence whether or not the defendants are guilty of the crime charged in the indictment. Much has been said by the defendants, and by the counsel for the Government, as to what the country may think of your verdict. Gentlemen, we are within the solemn confines of the courtroom. All the country wants from you is a just verdict on the evidence, a verdict that I know you will render, because you have given such close attention, and confining yourself to that it is your duty by deliberate consideration to arrive at a conclusion on the evidence, not to permit yourselves, as I am sure you will not, to be diverted into any attempt to make it seem as though any person was here on trial for the expression of any opinion. The sole question is, has the Government proven the guilt of the defendants beyond a reasonable doubt?

If so, your verdict is "Guilty"; if not, your verdict is "Not Guilty."

Any requests to charge? Any exceptions?

MR. CONTENT: No requests from the Government.

MR. BERKMAN: I do not know what the procedure is about taking exceptions.

THE COURT: You can take any exceptions now. You must take them now.

MR. BERKMAN: In particular, or general?

THE COURT: You must take particular exceptions. You may call the Court's attention to any error made.

MR. BERKMAN: No particular exceptions, but, if permissible, just may I have a general exception?

THE COURT: You may. If there is anything, — give me an idea of what you want on the record.

MR. BERKMAN: Just as a matter of record.

THE COURT: As a matter of record, you say you want a general exception.

MR. BERKMAN: Yes.

THE COURT: I will give it.

MISS GOLDMAN: As a point of instruction, I want to know, I would like to ask your Honor to instruct the jury that as long as the articles are in evidence of July, 1914, representing the report of meetings, which is a legitimate method common among all large publications to reprint or report things that have happened in the way of news, that that shall be ruled out as evidence.

THE COURT: I get your point. I am glad you called my attention to it. The defendants are not responsible for the utterances of persons other than themselves, in the July, 1914, meeting, as such. One article that was called the "Gauge of Class", written by the defendant, was not a speech made at that meeting. You may take into consideration that papers publish speeches. You must also take into consideration whether from the relations of the defendants with these people and the finding of this bundle of papers in the Mother Earth office at the time of the arrest, whether the defendants approved the sentiments in those articles, all on the question of credibility.

MR. BERKMAN: Two requests for the defendants: First, that

the Court charge the jury that even if they believed one or both of the defendants committed an overt act, or had told people not to register, but not as a result of an agreement or a conspiracy, then the jury must acquit.

THE COURT: Certainly, that is quite right. If there is no agreement, there cannot be a conviction.

MR. BERKMAN: And the second one, we ask the Court to charge that all jurymen must be convinced beyond a reasonable doubt before they can find the defendants guilty.

THE COURT: I so charge.

MR. BERKMAN: That even if one is not convinced of their guilt beyond a reasonable doubt, he must vote for their acquittal.

THE COURT: My charge is that the entire jury must bring in their verdict, and the jury must be satisfied beyond a reasonable doubt.

MR. CONTENT: Will you just make this one point there, as long as it is raised: That your Honor charged that one overt act was enough; will you add there one overt act by one conspirator?

THE COURT: Yes, one overt act by one conspirator is enough. If you find the agreement, then the acts and words of one conspirator are admissible as against the other, and binding on the other.

(The Marshal was then sworn in charge of the jury, and the jury retired to the jury room.)

GROUP VIII

BRIBERY — GOVERNMENT'S AGENTS PROVOKING OFFENSE

No. 88. Bribery — Crime Provoked by Government's Agents.

FORM NO. 88

Bribery — Crime Provoked by Government Agents.

CHARGE OF JUDGE CHARLES MERRIL HOUGH, DIRECTING THE JURY TO ACQUIT

United States *v.* Lynch, 256 Fed. 983

Mr. Wm. H. Day, Asst. U. S. Attorney.
Mr. Louis J. Vorhaus, for Defendant.

HOUGH, Circuit Judge (charging jury). I have spent some considerable time in reflecting upon what is a novel situation to me, and am now prepared to dispose of this trial: a motion having been made on the part of the defendant on the whole case, and in respect to the second and third counts of the indictment, to dismiss or advise the jury to acquit. I have reduced my views to writing, and I will read them:

It is plain and very old law that, while detectives and decoys are not only necessary, but praiseworthy, instruments in ascertaining whether a given person is committing or has committed crime, it is equally plain and old that detection exceeds its limits when the detective or the decoy provokes or creates a crime that would not otherwise have occurred. It is not always easy to apply this rule. Border line cases are difficult, and doubtless it is usually best to leave the matter to the jury when and if, in view of the evidence, a reasonable man would be justified in holding that the accused had the intent or desire to do that for which he

is indicted, and seized and swallowed the bait that was laid for him.

After reflection and argument yesterday afternoon, when the gentlemen of the jury had retired or been excused, it is to me plain that in this case there is no contradiction of any vital or really important point of fact. Whether there were meetings, not only on September 19th, or on that day, and also a few days before, whether one man, months or years before that September last, borrowed money of the other, or whether one man ever said that he sometimes became unconscious, meaning thereby intoxicated, are no more than the trivial trimmings of the following outstanding and dominating facts:

A man who expected to be an officer in the United States army, and had a very good reason to believe that he would be soon commissioned, was asked what he would want out of a government contract over which he seemed — only seemed — to have some control. He replied most properly, most honorably, "Nothing", because he was about to become an officer; and there the matter dropped on that occasion.

Later, days later, weeks later, at the instigation or by the order — it does not appear which, and it makes no difference which — of the governmental officers, or some of them, comprising the Department of Military Intelligence, this same man, now Capt. Fancher, said over the telephone that he had reconsidered this question of commission, when he had not reconsidered it at all, in truth and in fact, and then by his own statement he demanded money which he never expected to get in a manner that plainly seemed to say to the person to whom he made the demand:

"If you don't promise to pay secretly money to me, you don't get this government contract."

That was the trap or decoy. This, gentlemen, in my judgment as a lawyer, was going beyond all bounds; it was provoking and creating a crime; it provoked and created it by in effect and substance threatening loss if crime was not committed, and promising profit if it was committed. Under such circumstances the government is estopped from prosecuting on the ground that it caused and created that of which complaint is made.

Now, underlying this whole miserable affair is the fact that it all

grew out of what I think is a dishonorable sort of commission, or commission seeking that is all too common in this and every other commercial community; the story which you heard yesterday does not in substance and effect differ from the common and commonly known custom that, if a woman intrusts to her cook the business of going to the stores and procuring the sustenance for the family, buying it from grocers and butchers, the gift by the grocers and butchers to the cook is politely called a commission, for which, of course, the consumer pays in the long run, as the consumer generally pays for everything.

Now, that is not a pleasant thing to contemplate; but it is not, so far as the criminal law is concerned, unlawful. It is out of that bad custom that this poor business grew. The next source of growth was obviously the misdirected zeal of the Military Intelligence Department, or some of the officers of that department, who put Capt. Fancher in the position of a provoking agent. All of this makes me regret the whole occurrence. I may be permitted to say that I am sorry for every one concerned, but that does not change the law, which is that this prosecution cannot proceed, because it is an endeavor to punish a crime which would never have been committed if it had not been for the request, and I may almost say the threat, of the governmental officer to inflict loss, not upon the defendant, Lynch, personally, but upon his employing company, the Otis Lithographing Company, if they did not do the very thing for which this indictment is laid.

Therefore, gentlemen, I peremptorily advise you to acquit this defendant, and the clerk will enter verdict accordingly.

GROUP IX

TREASON

No. 89. Treason — Charge to Jury.

FORM NO. 89

Treason — Charge to Jury.

United States *v.* Fricke, 259 Fed. 674.

MAYER, JULIUS M., District Judge. Stated briefly, the following is the charge in the indictment against Fricke:

The grand jurors present (this is the second count, the only count left in the case, as you know) that Albert Paul Fricke, at and within the city, county, and state of New York, within the Southern district of New York, and within the United States, continuously and at all times from April 6, 1917, to October 29, 1918, under circumstances, conditions, and in the manner and by the means hereinafter set forth, then and there being a citizen of the United States, and a person owing allegiance to the United States, in violation of his said duty of allegiance, unlawfully, feloniously, willfully, traitorously, and treasonably did knowingly adhere to an enemy of the United States, to wit, to one Hermann Wessels, otherwise called Carl Rodiger, or Carl Roediger, or Haro Schroejers, who was then and there an enemy of the United States, to wit, a subject of the Emperor of Germany, and a member of the naval forces of the Imperial German Government (with which the United States at all times since April 6, 1917, have been at war), and a secret agent for, and a spy for, and a secret representative of, said Imperial German Government in the furthering and carrying on of its war against the United States, the said Wessels throughout said period residing in the city, county, state, and

Southern district of New York, giving to said enemy, Hermann Wessels, aid and comfort, that is to say:

"That said adherence of said Albert Paul Fricke to said Hermann Wessels, an enemy of the United States as aforesaid, and said giving of aid and comfort by said Fricke to the same from April 6, 1917, to October 29, 1918, consisted in his receiving and treating with said Hermann Wessels, and in his harboring the said Hermann Wessels, and in his concealing the identity of the said Hermann Wessels, and in his giving to officials, agents, and employés of the United States, false information known to him to be false regarding said Hermann Wessels, with intent to harbor said Wessels, to conceal his identity, and to conceal the fact that said Wessels was a secret agent for, and spy for, and secret representative of, the Imperial German Government, and in his supplying funds to, and procuring and endeavoring to procure funds for, said Hermann Wessels."

That, in substance and effect, is the charge of the indictment. It concludes with the words, "he, the said Albert Paul Fricke, when so adhering to, and giving aid and comfort to, said Hermann Wessels as such enemy of the United States, well knowing all the facts stated in this indictment."

I have omitted from this count any reference to such matters as I have excluded from consideration.

Then the indictment proceeds:

"That in the prosecution, performance, and execution of said treason, and of said traitorous and treasonable adhering and giving aid and comfort to said Hermann Wessels, an enemy of the United States as aforesaid, said Albert Paul Fricke, at the several times in that behalf hereinafter set forth in the specification thereof (being times when said United States were at war with said Imperial German Government as aforesaid, and being times when said Hermann Wessels was an enemy of the United States), in said city, county, state, and district, unlawfully, feloniously, willfully, traitorously, treasonably, knowingly, and with intent to adhere to and give aid and comfort to the said Hermann Wessels did do certain overt and manifest acts; that is to say, . . ."

And then are recited the overt acts to which I will refer later.

1. You must first determine whether on the evidence treason

has been committed by this defendant beyond a reasonable doubt, and you need not concern yourselves with the subject of the overt acts until and unless you are satisfied beyond a reasonable doubt that the government has shown that the defendant was guilty of treason as I shall define treason.

Of course, I do not mean by what I have said to control the mental method of arriving at a conclusion. You must first be satisfied that the defendant has committed treason beyond a reasonable doubt before there will be any necessity of concerning yourselves with some of the other questions which would arise.

2. The Constitution, art. 3, § 3, says :

"Treason against the United States shall consist only in levying war against them, or in adhering to their enemies [of the United States], giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act or on confession in open court."

The United States Criminal Code, § 1, provides :

"Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason." Act March 4, 1909, c. 321, 35 Stat. 1088 (Comp. St. § 10165).

In this case there is no charge of levying war, so the charge is that the defendant adhered to Hermann Wessels, alias Rodiger, an enemy of the United States, giving the enemy aid and comfort within the United States.

So far as is applicable to this case, every citizen of the United States, whether by birth or naturalization, as a matter of law, owes allegiance to the United States.

If, therefore, the defendant, Albert Paul Fricke, during the period he is charged with committing the offense in this indictment, was a citizen of the United States, then by reason of that fact he owed allegiance to the United States.

3. On the breaking out of the war between the United States and the Imperial German Government, the subjects of the Emperor of Germany were enemies of the United States, and remained such enemies during the continuance of the war; all members of the military and naval forces of the Imperial German Government, and all persons engaged by or working for the

Imperial German Government as agents or spies, to assist the Imperial German Government in the prosecution of its war, or to hamper the United States in the prosecution of its war against the Imperial German Government, are enemies of the United States.

4. Remembering the words, "adhering to its enemies, giving them aid and comfort", all of those elements are necessary to constitute the crime. There must be the adherence, there must be the giving of aid, and there must be the giving of comfort; and in general, when war exists, any act which, by fair construction, is directed in furtherance of the hostile designs of the enemies of the United States, and gives them aid and comfort, or if that is the natural effect of the act, it is treasonable in its character if an American citizen does an act which strengthens, or tends to strengthen, the enemies of the United States in the conduct of a war against the United States; that is, in law, giving aid and comfort to the enemies of the United States.

If an American citizen commits an act which weakens, or tends to weaken, the power of the United States to resist or to attack the enemies of the United States, that is in law giving aid and comfort to the enemies of the United States.

Applying these principles to the indictment in this case, if Hermann Wessels, or Carl Rodiger, as he is called, was an agent or a spy of the Imperial German Government in this country, for the purpose of assisting the Imperial German Government in the prosecution of its war, or in hampering the United States in the prosecution of its war against the Imperial German Government, and Fricke knew this fact, and with such knowledge Fricke harbored Wessels or concealed his identity, or supplied him with funds, or assisted or attempted to assist him in any way which might be useful in his mission to this country, that would be giving aid and comfort.

5. The intent of the defendant, however, is a vital ingredient of the crime, and a vital means of ascertaining whether the crime charged was committed.

If not satisfied beyond a reasonable doubt that the defendant's intention and purpose in acting as he did was evil — that is, if not satisfied beyond a reasonable doubt that he intended to aid

and comfort the enemies of the United States — and if not satisfied that that was his object, the defendant must be found not guilty.

If the defendant's intention in doing what he did after April 6, 1917, was not in any way to injure this country's interest, but merely to assist Rodiger or Wessels as an individual, he must be found not guilty — assisting him as an individual, as distinguished from assisting him in his purposes, if such there existed, of aiding the Imperial German Government, or of injuring the United States of America.

6. The crime of treason, however, cannot be committed unless there be an overt act, and that overt act must be proved by at least two witnesses.

It is unnecessary to dilate upon the reasons for that provision, but it is always interesting and helpful perhaps to understand briefly the reasons. That was a very necessary safeguard in the opinion of the Constitution makers.

The class of treason with which we are dealing in this case only takes place, and only can take place, during war — when war is on. Naturally, passion is high; patriotic men and women are concerned with the safety of their country; and in the excitement it is but human nature sometimes to lose sight of the calm requirements of the law, and convict, as the expression goes, on general principles; and so, to safeguard against anything of that kind, and in order to prevent the conviction of any man for what he had in his mind, as distinguished from what he did, the constitutional provision as to an overt act was inserted; and that of course must be carried out by Congress, and that of course is the law.

An overt act in itself may be a perfectly innocent act standing by itself; it must be in some manner in furtherance of the crime.

So that brings me to the question of overt acts. Under the law of treason it is necessary, before a person can be convicted, that there be some overt act; in other words, a person cannot be convicted of treason merely for having the intention in his own mind to adhere to and give aid and comfort to the enemy. This intention must be manifested by what is termed an overt act.

The second count of this indictment contains 16 overt acts.

The government has failed to prove by two witnesses overt acts Nos. 4, 5, 7, 8, 9, 11, 12, 13, 14, 15, and 16.

Before the defendant can be convicted, it is necessary for the prosecution to prove the commission of at least one of the overt acts numbered 1, 2, 3, 6, or 10 by two witnesses; it is not necessary to prove all of them. In other words, if you are satisfied beyond a reasonable doubt that the defendant is guilty of treason, you may convict, provided you are satisfied beyond a reasonable doubt that one overt act was committed.

7. Where the overt act is single, continuous, and composite, made up of, or proved by, several circumstances, and passing through several stages, it is not necessary, in order to satisfy the provisions of the Constitution requiring two witnesses to an overt act, that there should be two witnesses to each circumstance at each stage, as distinguished from the necessary proof of two witnesses to an act other than continuous and composite.

That means this: If one of the overt acts, we will say, was as in this case the sending of a telephone message, and you have the testimony of the telephone operator who received the message for transmission, and the testimony of the person to whom the message was transmitted, there are the stages of one transaction proved by two witnesses, as the one witness was at one end of the telephone and the other witness at another.

Overt act No. 1 reads:

"Said Albert Paul Fricke, from April 6, 1917, to April 18, 1917, held, and caused to be held, on deposit with the Bank of the Manhattan Company, in the name of F. Ad. Richter & Co., of New York, for use of said Hermann Wessels, six thousand dollars, the said six thousand dollars being the balance of the proceeds of a credit of ten thousand dollars theretofore, to the knowledge of said Fricke, effected and transmitted to the United States from Germany, intending to deliver the same to said Wessels from time to time, and while the said Wessels should be an enemy as aforesaid of the United States, with the intent and purpose on the part of said Fricke that said Wessels should use said money in furtherance of his acting, as aforesaid, as a secret agent for, and spy for, and secret representative of, said Imperial German Government in the furthering and carrying on of its war against the United States."

On that overt act there is the testimony of Charles E. West, Mortimer Witt, and Harold Powelson, the clerk in the Manhattan Bank.

It is for you to say whether their testimony proved this overt act which has to do with this remainder of the deposit in the Bank of Manhattan.

Overt act No. 2 reads as follows:

"Said Albert Paul Fricke, from April 18, 1917, to September 6, 1917, delivered and caused to be delivered to said Hermann Wessels six thousand dollars, being the proceeds of said six thousand dollars heretofore described as held and caused to be held on deposit with the Bank of the Manhattan Company, in the name of F. Ad. Richter & Co., of New York, to be used, and intended by said Fricke to be used, by said Wessels as he, the said Wessels, might determine, and be advised and directed in furtherance of said Wessels' acting as aforesaid as a secret agent for, and spy for, and secret representative of, said Imperial German Government in the furthering and carrying on of its war against the United States, the said delivery being made in the following amounts on the following dates: April 18, 1917, one thousand dollars; May 1, 1917, one thousand dollars; May 31, 1917, one thousand dollars; June 29, 1917, one thousand dollars; August 8, 1917, one thousand dollars; September 6, 1917, one thousand dollars."

That is the count that refers to the delivery of the money. The witnesses who testified concerning this act were Charles E. West, Mortimer Witt, George H. Nickl, the paying teller of the Manhattan Bank, and E. B. Lilly, the paying teller of the Manhattan Bank, who took Mr. Nickl's place when Mr. Nickl was away.

It is for you to say, upon the evidence of those witnesses, as to whether that act has been proved.

Overt act No. 3 is as follows:

"Said Albert Paul Fricke, on August 28, 1917, borrowed from the Bank of the Manhattan Company three thousand dollars, with intent on the part of said Fricke to advance and deliver the same to said Hermann Wessels from time to time, and while the said Wessels should be an enemy as aforesaid of the United States, with the intent and purpose on the part of said Fricke that the same should be used by said Wessels in furtherance of said Wessels'

acting as aforesaid as a secret agent for, and spy for, and secret representative of, said Imperial German Government, in the furthering and carrying on of its war against the United States."

That has to do, with the \$3000 borrowed by Fricke from the Manhattan Company. The witnesses to that are Mr. Forster, the cashier of the Manhattan Bank; H. M. Bucklin, the loan clerk of the Manhattan Bank; Harold Powelson, clerk in the Manhattan Bank; and James A. Coe, the office boy of Richter & Co.

It is for you to say, on the evidence, whether you are satisfied, as in all the cases of the overt acts, beyond a reasonable doubt, that that and the preceding acts have been proved.

Overt act No. 6 reads as follows:

"Said Albert Paul Fricke, on July 28, 1917, for and on behalf of said Hermann Wessels, enemy as aforesaid, sent and caused to be sent a cablegram to Olten, Switzerland, directed to F. Ad. Richter & Company, of the tenor following:

"July 28, 1917.

"F. Ad. Richter & Co., Olten, Switzerland:

"Require money.

F. Ad. Richter & Co.'

— the said Fricke intending thereby to cause a message to be sent to the aforesaid Adolf Richter in Germany, and to the Imperial German Government, informing them that money was required, and further intending thereby to secure from said Adolf Richter and from said Imperial German Government money and funds for the use of said Hermann Wessels in furtherance of said Wessels' acting, as aforesaid, as a secret agent for, and spy for, and secret representative of, said Imperial German Government in the furthering and carrying on of its war against the United States."

The witnesses who testified to the sending of this cablegram were Mrs. Anna Wedemeyer, of Liberty, N. Y.; Miss Hazel Rampe, the telephone operator; John F. Murray, clerk of the telephone company; Charles E. West; Mortimer Witt; and Robert H. Walls, operator of the cable company.

It is for you to say whether you are satisfied beyond a reasonable doubt that the overt act of sending this cablegram by Fricke has been proven.

Overt act No. 10 is the act that arises out of the May 3d statement, and I will come to that a little later.

So we have it briefly as follows: Up to November, 1916, so far as this record shows, the defendant, Fricke, who was the New York manager of F. Ad. Richter & Co., of Berlin, was a quiet, orderly law-abiding man. He had been duly and properly naturalized, and he owed allegiance to this country.

From the outbreak of the European war, in 1914, up to November, 1916, so far as this case goes, he was pursuing his occupation in his usual fashion, attending to his business. Testimony has been produced that he was a man of good character, with the highest reputation for truth and veracity.

On the 11th day of November, 1916, the man Rodiger appeared in this country.

There was a Carl Rodiger, or there was supposed to be a Carl Rodiger, who was a genuine Carl Rodiger, who was the head of the Swiss branch of F. Ad. Richter & Co.

There is no dispute between the prosecution and the defense that Fricke believed that the genuine Carl Rodiger was about to arrive in this country. But when a man came it was in due course made known to Fricke that the real Rodiger was not here, and that in his place was a man who had entered this country with the aid of a false passport, and that the man was some one other than Rodiger.

Fricke, in a statement signed by him, said:

"In October, 1916, I received a cablegram from the branch office of Richter & Co., in Copenhagen, signed by Mr. Koffel;

"Rodiger, of Olten branch, will arrive on S. S. Christianafjord. Notify Binder, of Behrens & Company, 95 Broad street, in reference to will."

"(Wording is the best of my recollection.) I carried original cablegram around in my pocket and must have destroyed it. The above is the gist of it. The mention of the will was undoubtedly made to make the message pass the censor or give Rodiger a plausible excuse.

"I was mystified, but went over to Behrens & Co., whom I did not know. I went into the private office of Mr. Behrens, and showed him the cablegram. Behrens, who was very curt and

grouchy, turned me over to Mr. Binder in the outer office. I introduced myself, and gave him the cablegram to read. He did not seem to understand the meaning of the message or the purpose of Rodiger's visit, and we decided to await Rodiger's arrival.

"The steamer arrived in port, but it was not until a week or ten days later that one afternoon Rodiger called at my office, introducing himself as Mr. Rodiger, showing me a paper with his photograph, which appeared to be a Swiss passport, and explaining his late call by the fact that while cutting his toe nail he had injured a toe, which prevented him from walking. He was limping. Whether it was affected or not I do not know. He said he had come in a taxi, and his taxi was waiting for him downstairs.

"He further said he came from Mr. Richter, whom he had met in Berlin in the office or building of the Admiralstab.

"That Mr. Richter was excused from military service, and had been drafted by the Intelligence Service (or some such organization) as his branch offices in neutral countries (Rotterdam, Copenhagen, Olten) offered him good grounds for crossing the borders. And further said that Mr. Richter had wanted to come to America himself on a U-boat, but that the idea was given up. Rodiger said 'I am not the real Rodiger of Olten,' although the real man has left Switzerland on the day stated in the passport. I cannot tell you my real name.' And he never did, and I never asked him for it."

If this statement of Fricke's is correct, then it appears that quite early Fricke knew that this was not the Rodiger of Olten but another man. Omitting other portions for brevity, the statement continues:

"During November and the first part of December he called once or twice a week. On one of these visits he said: 'I am to investigate if it is possible to place Irish recruits on British warships for the purpose of placing bombs on the ships, and I found out and reported that it cannot be done. My strict orders are that nothing is to be undertaken directed against the United States. We want to place bombs on British freight ships leaving New York harbor, and I will pay ten to fifty thousand dollars for each ship so destroyed. I expect another man or two from the other side who are to help me make the bombs, or make the

bombs,' I cannot remember just which. The men did not arrive, but were apparently taken off the ships by the British; in fact, he told me this suspicion a little later, and afterwards also said that the scheme he had abandoned entirely."

I think it is very important to have a correct perspective of this case. In November, according to Fricke, the man Rodiger said that he had strict orders that nothing was to be undertaken directed against these United States.

I do not see any reason on the testimony to doubt that statement at that time.

You have the picture, if this statement of Fricke's is believed, of a man entering the country with a false passport, being a person other than Fricke originally expected, that is, other than a legitimate person, who came here for certain purposes.

8. Those purposes, if you believe he came here for such, may have been very sinister purposes; but they had nothing whatever to do with treason against the United States of America.

If Fricke was guilty of any moral or legal wrong prior to the 6th day of April, 1917, it was under some other statute, if he was legally liable, than the statute under which he is now indicted — that is very important to bear in mind.

Under our system we can only deal with the subject-matter of the indictment; we cannot deal with anything else. If a man is accused of larceny, he cannot be convicted of bigamy.

This man is accused of treason. Prior to our entry into the war every man, as a matter of law, had the right to his own opinion as to where his sympathies would be, and he had a right to do anything lawful in that connection — he had, of course, no right to do anything unlawful.

Prior to April 6, 1917, a man may have been pro-Ally in act or in sympathy, or he might have been pro-German in act or in sympathy, and he was within his rights, however we may, as individuals, have differed with one view or the other.

In connection with pro-Ally sympathy or pro-German sympathy, any man could have engaged in any legitimate propaganda or any other legitimate act. If, on the other hand, a man was concerned with a violation of our laws of neutrality, and the evidence existed, it was open to the government to present such

matters to appropriate tribunals, and, if an indictment was found, to cause a prosecution to be pursued.

So that, without going into a mass of detail, if Rodiger came here for a sinister purpose in November, 1916, as we were not at war there could under the law be no treason under this indictment possible to be committed until after the 6th day of April.

When you consider the next point you will find in the testimony, if you believe it, that Fricke came to know this man Rodiger in the manner indicated; that Rodiger called more or less frequently at the business office and the home of Fricke; later Madame Victorica called and Fricke arranged for a meeting between her and Rodiger — that is, in January, 1917; and on March 6, 1917, after diplomatic relations had ceased between Germany and ourselves, there came, if you believe the testimony, to Fricke the sum of \$10,000 from Berlin. That was at that time a lawful transaction. The government was permitting radio communication between Nauen, Germany, which is near Berlin, and this country, and communication between Nauen and Sayville; and I think there were some other radio stations between the two countries.

So the transaction was in itself lawful. But when you get your minds to April 6th you are entitled to consider the sequence of events on the question of what was within Fricke's knowledge as to who Rodiger was and what Rodiger's purposes were. What I am endeavoring to do is to make clear that all these events that preceded our declaration of war, viewed in their worst possible light, do not in any manner charge the defendant with any crime for which he may be here convicted, but that those events must be carried in mind in order that you may determine what on April 6th was the knowledge of Fricke as to Rodiger, and what was his intent after that in giving this money to Rodiger, and borrowing, if you believe it, \$3000 to lend or give to Rodiger, and in addition, in giving him small sums for some time afterwards.

In addition to that, it is a question of knowledge; what did he know was the purpose and mission of Rodiger after this country went into the war?

It is true that the \$10,000 referred to in the indictment and testimony belonged to Rodiger, but the payment of any of it after

April 6th, with the knowledge and intent of aiding Wessels in a manner which would be contrary to the interests of this country, cannot be justified as a matter of law; whatever had happened before, it became the duty of the defendant, in any event, not to adhere to an enemy of this country, and not to give that enemy aid and comfort; and whatever happened before, whether innocent or not, could be wiped off the slate, regarded or disregarded. Nevertheless the duty was upon the defendant after April 6, 1917, not to adhere to an enemy and give him aid and comfort.

If from all the evidence you think that he gave this money to Wessels, alias Rodiger, just as an individual, as distinguished from Wessels purposing to do some wrong against the United States, or some act for the Imperial German Government, if you believe that the payment was purely personal, of course it is not adhering to the enemy, and giving aid and comfort, in the sense of the statute; but if you believe the contrary, then it is.

Let me make the distinction very simple: During the war there were many quiet, orderly, enemy aliens, and in a good many business institutions they were discharged because the employers felt it would be unwise to keep them. If a man thus discharged had come to you or to me and said, "I am in very hard straits, lend me ten dollars or a thousand dollars," and we had done it, that of course is not adhering to the enemy. That is an innocent act, and, even though the man was an alien enemy, that was innocent because our purpose was innocent and our intent was innocent; we did not intend to do wrong. But if, on the other hand — and I am not referring to this case at all, I am only illustrating — a man came to me and said, "I am an alien enemy and you know it, and I want you to lend me a thousand dollars, or give me a thousand dollars, to do a wrong against the United States of America," that, of course, is obviously adhering to the enemy and giving him aid and comfort.

What I want to impress upon you is, when you have arrived at what you think the testimony in this case has proven to your satisfaction beyond a reasonable doubt, you must bear in mind what you shall conclude as to the knowledge Fricke had concerning this man Wessels, or Wessels' purpose and Wessels' intent after April 6, 1917; and when you have resolved that in your

minds to your satisfaction beyond a reasonable doubt, then you must say to yourselves, Was what Fricke did, whatever you may find he did, of a character which indicated that his mind entertained an evil intent to do that wrong to the United States of America which consists in adhering to its enemies, giving them aid and comfort?

That brings me to the tenth overt act. We have disposed, so far as I am concerned, of the discussion of the money transactions. The tenth overt act reads as follows:

"Said Albert Paul Fricke, on May 3, 1918, willfully and knowingly falsely stated to Francis G. Caffey, an official of the United States, to wit, United States Attorney for the Southern District of New York, and to Ben A. Matthews, an agent and employé of the United States, to wit, an Assistant United States Attorney for the Southern District of New York, and to Charles De Woody, an agent and employé of the United States, to wit, Division Superintendent of the Bureau of Investigation of the Department of Justice of the United States, and to Harry J. Jentzer, an agent and employé of the Bureau of Investigation of the Department of Justice of the United States, and to Emma R. Jentzer, an agent and employé of the United States, to wit, Special Employé of the Bureau of Investigation of the Department of Justice of the United States, each of whom was then and there duly engaged, for and on behalf of the United States, in investigating the said Hermann Wessels, his status and citizenship, and his activities in the United States, the said Fricke then and there well knowing the aforesaid official position, agency, and employment of each of the aforesaid persons, and that each was engaged in making the aforesaid investigation for and on behalf of the United States, with intent on the part of said Fricke to deceive the same as such officials, agents, and employés: (1) That Rodiger, meaning thereby said Hermann Wessels, when said Fricke first saw him in the United States, told said Fricke that his (Rodiger's) business was about a will, that he came from Olten, Switzerland, that he was the manager for the Olten branch of the firm of F. Ad. Richter & Co., and that he was a citizen of Switzerland; (2) that ten thousand dollars received by said Fricke through Schulz & Ruckgaber for Rodiger was a

remittance from Switzerland; (3) that he, the said Fricke, had not paid Rodiger any money subsequent to September, 1917; (4) that he, the said Fricke, never knew Rodiger under the name of Schroejers."

Putting the matter in lay language, this overt act means that when Fricke made his various statements on the 3d day of May, 1918, and falsely stated these four matters to which I have referred, he did that for the purpose of deceiving the officials of the government. The argument in that regard is that, if this statement was correctly taken down, the war having not only commenced, but being then in operation for over a year, Fricke had the purpose and intent of aiding this man Rodiger in such a way as to make it appear that he was a proper person to be in this country, and to conceal from the officials how the man got into the country, who he really was, what his purpose was, where the money came from, and the fact, also, that the man Rodiger was going under another alias, namely, Schroejers.

9. That brings up this question of confessions. A confession must be full, free, and voluntary. There must be nothing about a confession which involves duress.

If you are satisfied that what Fricke said on the 3d of May was a voluntary statement, induced without fear or without promise, then you may take so much of the statement as I have left in evidence and consider it for what you think it is worth.

The same applies to all the succeeding statements.

As to the 15th of June statement, there can be no question but that was signed by Fricke, and you will remember that in addition Fricke made memoranda here and there on the side of that statement in his own handwriting, where he made some corrections of one kind or another, and the only question you have to deal with is, first, whether that statement of June 15th was voluntary or not; and, second, whether, in your judgment and opinion, the facts set forth by him were true.

If what he said on June 15th, and the other evidence in the case introduced by the prosecution, is believed by you, then what he said on May 3d, in the particulars to which I have referred, is false; although in stating that I do not mean to state an opinion, I am only making a comparison — because it is for you to deter-

mine whether what he said on the 3d day of May, 1918, was true or false in the particulars to which I have called your attention.

Now, if those statements in your opinion were false — and I always mean beyond a reasonable doubt — then you should inquire into the intent in that connection.

Why did he make a false statement? Was it because he feared that he was embroiled, and that that method would perhaps relieve him — by embroiled I mean as to matters that occurred before the war.

Or was it that he feared he was embroiled by reason of acts that had happened since the war in the way of giving the man money?

Or was it that he desired to protect the man Rodiger or what? I am repeating myself quite often in order to make myself clear. Did defendant intend, by his transactions with Wessels, if you believe the testimony as to those transactions, by his statement on May 3d, whatever credence you give to it one way or the other, by his conversation with Sanders, whatever credence you give to that, did he intend to adhere to the enemy and give him aid and comfort, and intend so to do with that evil motive which would have that purpose in it, of giving aid and comfort and adherence to the enemy?

It is to be remembered, first, that there is no proof as to anything that Rodiger did or accomplished, but that fact is not relevant upon the point as to what the intention of the defendant was. If the defendant intended to adhere to the enemy, and give aid and comfort, and did one overt act proved by two witnesses, and you are satisfied of that beyond a reasonable doubt, you must find him guilty, and it is utterly immaterial whether Rodiger did anything or did not do anything in the execution of any designs which in your judgment he may have had.

What I wish to get clear in your mind is that you are to test the acts of the defendant from the 6th day of April, 1917, as you believe them to have been proved beyond a reasonable doubt, to determine whether he adhered to Herman Wessels, alias Rodiger, an enemy, and give him aid and comfort for the purpose of assisting the Imperial German Government and injuring the United States of America.

In that connection, to repeat for the purpose of emphasis, you are to bring your minds to the point of considering: What did the defendant know on the 6th day of April, 1917, as to the character and purpose of Wessels? What did he do thereafter in regard to the concealment of Wessels and in regard to the statements concerning Wessels and his transactions with him? And what was his intent in whatever he did after the 6th day of April, 1917? Was he moved by the evil intent of which I have spoken or was he not? [The court here charged on reasonable doubt.]

GROUP X

OPIUM AND NARCOTICS

- No. 90. Indictment for Production of Opium.
- No. 91. Indictments — Morphine.
- No. 92. Demurrer to Indictment No. 1464.
- No. 93. Order Consolidating Cases for Trial.

FORM NO. 90

Indictment for Production of Opium.

Paris *v.* United States, 260 Fed. 529 (C. C. A. 8th Cir.).

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
WESTERN DISTRICT OF OKLAHOMA

United States of America,
Plaintiff,
v.
L. W. Paris,
Defendant.}

At the January Term of the District Court of the United States for the Western District of Oklahoma, begun and held at the City of Guthrie, in said District, on the seventh day of January, in the year of our Lord, one thousand nine hundred eighteen, the Grand Jurors of the United States of America, within and for said District, having been duly summoned, impaneled, sworn and charged to inquire into and true presentment make of all public offenses against the laws of the United States of America, committed within said District, in said State of Oklahoma, upon their oaths aforesaid, in the name and by the authority of the United States of America, do find and present:

That heretofore, to wit, on or about the twelfth day of January, in the year of our Lord one thousand nine hundred eighteen, in the County of Oklahoma, in the Western District of Oklahoma and within the jurisdiction of this Court, one L. W. Paris whose more full, true and correct name is to the Grand Jurors unknown, then and there being, did then and there willfully, unlawfully and feloniously carry on the business of a dealer in opium and coca leaves, and the derivatives, compounds and preparations thereof, without first having paid the special tax therefor and registering with the Collector of Internal Revenue for the District of Oklahoma, all as required by law;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

JOHN A. FAIN,
United States Attorney.

FORM NO. 91

Indictments — Morphine.

Hosier *v.* United States, 260 Fed. 155 (C. C. A. 4th Cir.).

Indictment No. 1464.

JULY TERM, A.D. 1918. ALEXANDRIA DIVISION.

THE GRAND JURORS OF THE UNITED STATES OF AMERICA, duly impaneled, sworn and charged to inquire within and for the body of the Eastern District of Virginia, and now attending the said Court, upon their oaths present that G. E. Hosier, heretofore, to wit, on or about the 4th day of May, A.D. 1918, at Norfolk, in the said Eastern District of Virginia, and within the jurisdiction of this Court, did unlawfully and feloniously sell, barter, exchange and give away to one Joseph Jacobs a certain quantity of a certain preparation and derivative of opium, to wit, a certain amount of morphine, the exact quantity of which is to the grand jurors unknown; and did then and there sell, barter, exchange and give away the said quantity of morphine without and not in pursuance of a written order of the said Joseph Jacobs on a form issued in blank for that purpose by the Commissioner of Internal

Revenue of the United States; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

RICHARD H. MANN,
United States Attorney.

Witnesses:

L. S. FOSTER,
JOSEPH JACOBS.

Indictment No. 1481.

SEPTEMBER TERM, 1918. NORFOLK DIVISION.

THE GRAND JURORS of the United States of America, duly impanelled, sworn and charged to inquire within and for the body of the Eastern District of Virginia, and now attending said Court, upon their oath present: that G. E. Hosier, heretofore, to wit, on or about the 8th day of July, A.D. 1918, at Norfolk, in the Eastern District of Virginia, and within the jurisdiction of this Court, he, the said G. E. Hosier, being then and there a person who had not registered under the provisions of an Act of Congress approved on the 17th day of December, A.D. 1914, and who had not paid the special tax provided for therein, did unlawfully and feloniously sell and barter to a certain person, to wit, one Emil Klein, a certain quantity of a certain preparation, derivative and compound of coca leaves, to wit, about three grains of cocaine. And the GRAND JURORS do further say that the cocaine so sold as aforesaid was not sold in pursuance of a written order of the said Emil Klein on a form issued in blank for that purpose by the Commissioner of Internal Revenue of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

RICHARD H. MANN,
United States Attorney.

Indictment No. 1548.

NOVEMBER TERM, 1918, NORFOLK DIVISION.

THE GRAND JURORS of the United States of America, duly impanelled, sworn and charged to inquire with and for the body

of the Eastern District of Virginia, and now attending said Court, upon their oath present: that G. E. Hosier, heretofore, to wit, on or about the 9th day of July, A.D. 1918, at Norfolk, in the Eastern District of Virginia, and within the jurisdiction of this Court, he, the said G. E. Hosier, being then and there a person who had not registered under the provisions of an Act of Congress approved on the 17th day of December, A.D. 1914, and who had not paid the special tax provided for therein, did unlawfully and feloniously sell and barter to a certain person, to wit, to one Mrs. M. E. Gaines, a certain quantity of a certain preparation, derivative and compound of coca leaves, to wit, about three grains of cocaine. And the Grand Jurors do further say that the cocaine so sold as aforesaid was not sold in pursuance of a written order of the said Mrs. M. E. Gaines on a form issued in blank, for that purpose by the Commissioner of the Internal Revenue of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

RICHARD H. MANN,
United States Attorney.

Witness:

MRS. M. E. GAINES.

FORM NO. 92

Demurrer to Indictment No. 1464.

Hosier v. United States, 260 Fed. 155 (C. C. A. 4th Cir.).

(Title of Cause.)

The said defendant comes and says that the said indictment is not sufficient in law; and for the grounds of his said demurrer, says:

- (1) That the said indictment is too vague, indefinite and uncertain in its allegations;
- (2) That said indictment fails to allege that said defendant was not duly registered as required by law to sell such said drugs.

I hereby certify that in my opinion the above demurrer is well founded in point of law.

HENRY BOWDEN,
Of Counsel for the Defendant.

FORM NO. 93

Order Consolidating Cases for Trial.

Hosier v. United States, 260 Fed. 155 (C. C. A. 4th Cir.).

(Title of Cause.)

This day came the United States by their Attorney and the defendant appeared in discharge of his recognizance, and having demurred to Indictment No. 1464, the same was fully argued and overruled by the Court to which ruling the defendant excepted. Thereupon the defendant, by his counsel, moved the Court for a continuance of this case on the ground of the absence of material witnesses, and the same being fully argued was overruled by the Court, to which ruling the defendant excepted. Whereupon the United States by their attorney moved the Court to consolidate the three indictments against the said defendant, to wit; Nos. 1464, 1481 and 1548, which motion being fully argued was sustained and it is ordered that the said three indictments be consolidated, and that the said defendant be arraigned and tried thereon, to which ruling and action of the court the defendant, by his counsel, excepted.

GROUP XI

CONTEMPT

- No. 94. Information and Order—Contempt Proceedings for Attempting
Improperly to Influence the Jury.
- No. 95. Citation.
- No. 96. Return to Citation.
- No. 97. Demurrer to Information.
- No. 98. Motion to Quash.
- No. 99. Plea.
- No. 100. Judgment.

FORM NO. 94

Information and Order — Contempt Proceedings for Attempting Improperly to Influence the Jury.

Kelly *v.* United States, 250 Fed. 947 (C. C. A. 9th Cir.).

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR
THE DISTRICT OF MONTANA

In the Matter of the Contempt
of

DANIEL M. KELLY and ALBERT J. GALEN.

BE IT REMEMBERED, that on February 1, 1917, an information
in the above-entitled matter was duly filed in said court, said
information being in the words and figures following, to wit:

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR
THE DISTRICT OF MONTANA

In the Matter of the Contempt
of

DANIEL M. KELLY and ALBERT J. GALEN.

INFORMATION AND ORDER

At the adjourned November Term, A.D. 1916, of the United States District Court for the District of Montana held in the city of Helena, in the State and District of Montana, beginning on the 2d day of January, A.D. 1917, in pursuance of an order of the above-entitled court directing the filing of this information, comes now Burton K. Wheeler, United States Attorney for the District of Montana, and informs the Court:

That at the said term of said court, to wit, on the 15th day of January, A.D. 1917, at the city of Helena, in the state and district of Montana, aforesaid, there came on to be tried in said court before the Honorable George M. Bourquin, then and still Judge of said Court, and a jury of twelve men duly empaneled and sworn for that purpose, a certain issue, in due manner joined between the United States of America and certain persons, to wit, A. M. Alderson, W. C. Rae, R. R. Sidebotham, J. G. G. Wilmot, J. W. Speer, D. G. Bertoglio, M. A. Cort, C. A. Rainwater, C. W. Tobin and W. W. White, upon a certain criminal indictment then and there pending in said court against the said A. M. Alderson, W. C. Rae, R. R. Sidebotham, J. G. G. Wilmot, M. A. Cort, J. W. Speer, D. G. Bertoglio, C. A. Rainwater, C. W. Tobin and W. W. White, and charging them and each of them with having wrongfully, unlawfully, and feloniously devised a scheme and artifice to defraud divers persons mentioned in said indictment, of certain moneys and property, and in furtherance of said scheme had placed or caused to be placed in the postoffice of the United States at Great Falls, Montana, certain letters, all as alleged in said indictment, and said indictment further charged the said A. M. Alderson, W. C. Rae, R. R. Sidebotham, J. G. G. Wilmot, M. A. Cort, J. W. Speer, D. G. Bertoglio, C. A. Rainwater, C. W. Tobin and W. W. White with having confederated, combined and conspired to violate a law of the United States, to wit, Section 215 of the Penal Code of the United States of 1910, by forming a conspiracy to devise an artifice or scheme to defraud divers persons of their moneys and property and in furtherance thereof use the mails and postoffice establishment of the said United States, contrary to the statute in such case made and provided and against

the peace and dignity of the United States of America; that the trial of said cause continued daily from the said 15th day of January, A.D. 1917, with adjournment of said court from day to day, until the termination thereof, to wit, on the 27th day of January, A.D. 1917; that at the time of each and every one of the said adjournments of said court, while said cause was still pending and undetermined and the trial thereof in progress, to wit, at or about the hour of thirty minutes after five o'clock in the afternoon of each of said days when such adjournments would be taken, the Court duly admonished the said jury in accordance with law as to its conduct during the said adjournments of said court and cause, and adjourned the said court and the trial of said cause until ten o'clock in the forenoon of the following day, and said jury would thereupon separate and go to their respective places of abode, in the said city of Helena, Montana; that long before and ever since the first day of January, A.D. 1917, the said Daniel M. Kelly and Albert J. Galen were, and now are attorneys and counsellors at law and admitted to practice in the said District Court of the United States for the District of Montana and members of the bar thereof and as such they, the said Daniel M. Kelly and Albert J. Galen, appeared in the above-entitled court for and on behalf of the said A. M. Alderson and W. C. Rae on the trial and defense of said cause and acted as such for the said A. M. Alderson and W. C. Rae throughout the trial and said cause.

That the said Daniel M. Kelly and Albert J. Galen, and each of them, being attorneys for the said A. M. Alderson and W. C. Rae, on the trial of said case as aforesaid, and during the pendency of said trial, did, in the city of Helena, in the county of Lewis and Clark, State and District of Montana, in the presence of said court or so near thereto as to obstruct the administration of justice, commit a contempt of this court, in this that the said Daniel M. Kelly and Albert J. Galen, between the said 15th day of January, 1917, and the 27th day of January, 1917, during the adjournments of said court during said trial as aforesaid, visited and conversed with certain members of said jury, empaneled and sworn to try said case, as aforesaid, knowing them to be jurors empaneled and sworn to try said case as aforesaid with a view of

improperly influencing the actions of said jurors in their deliberations and determination of said cause of the United States of America against the said Alderson and others; and the said Albert J. Galen, in the presence of said court or so near thereto as to obstruct the administration of justice, did, on the 23d day of January, 1917, during the pendency of the trial of said case and during the adjournment of said court from the said 23d day of January, 1917, to the 24th day of January, 1917, in the bar-room of the Placer Hotel, in the city of Helena, in the State and District of Montana, visit and converse with one W. B. Warner, who then and there was one of the jurors empaneled and sworn to try said case as aforesaid, with a view on the part of said Albert J. Galen then and there had to improperly influence the actions of the said W. B. Warner, a juror in said case as aforesaid, in his deliberations and determination of the said case then on trial as aforesaid, and the said Albert J. Galen did then and there furnish and give to the said W. B. Warner, knowing him to be a juror as aforesaid in said case, liquid refreshments, and he, the said Albert J. Galen, did at the time of so furnishing said liquid refreshments to the said juror B. Warner partake of and drink liquid refreshments himself in company with the said juror W. B. Warner.

And the said Daniel M. Kelly, in the presence of said court or so near thereto as to obstruct the administration of justice, did, on the 24th day of January, 1917, in the bar-room of the Placer Hotel, in the city of Helena, in the State and District of Montana, visit and converse with one Charles E. Brown, who then and there was one of the jurors empaneled and sworn to try said case as aforesaid, with a view on the part of said Daniel M. Kelly then and there had to improperly influence the actions of the said Charles E. Brown, a juror in said case as aforesaid, in his deliberations and determination of the said case then on trial as aforesaid, and the said Daniel M. Kelly did then and there furnish and give to the said Charles E. Brown, knowing him to be a juror as aforesaid in said case, liquid refreshments.

That the said Daniel M. Kelly and Albert J. Galen, and each of them, in the presence of said court or so near thereto as to obstruct the administration of justice, did, on the 24th day of Jan-

uary, 1917, during the pendency of said case and during an adjournment of said court from the said 24th day of January, 1917, to the 25th day of January, 1917, in the Placer Hotel, in the city of Helena, in the State and District of Montana, visit and converse with the said W. B. Warner, the said Daniel M. Kelly and Albert J. Galen then and there well knowing that said W. B. Warner was then and there one of the jurors duly empaneled and sworn to try said case, as aforesaid, and with a view on the part of the said Daniel M. Kelly and Albert J. Galen, and of each of them, to improperly influence the said W. B. Warner, juror as aforesaid, in his deliberations and determination of the said case, then on trial and adjourned as aforesaid, and did promise the said W. B. Warner to introduce him, the said W. B. Warner, to some of the members of the Fifteenth Legislative Assembly of the State of Montana, which said Fifteenth Legislative Assembly was then in session in the said city of Helena, in said State and District of Montana, for the purpose of securing for the said W. B. Warner the aid, assistance and support of some of the said members of the said Fifteenth Legislative Assembly in the passage of a certain bill which had heretofore been or was about to be introduced in said Fifteenth Legislative Assembly of the said State of Montana, and which the said W. B. Warner was interested in and desirous of having passed as a law by the said Fifteenth Legislative Assembly of the State of Montana.

Wherefore it is prayed that a citation issue out of this Court directing the said Daniel M. Kelly and Albert J. Galen to show cause on a day certain before this Honorable Court why they, and each of them, should not be adjudged in contempt of this Court.

B. K. WHEELER,
United States Attorney, District of Montana.

United States of America, } ss.
District of Montana }

BURTON K. WHEELER, being first duly sworn, deposes and says that he is the duly appointed, qualified and acting United States Attorney for the District of Montana; that he has read the foregoing information and knows the contents thereof, and

whether they must or may further appear or plead to said information.

F. W. METTLER,
L. O. EVANS,
F. C. WALKER,
W. T. PIGOTT,

Attorneys for said Kelly and Galen.

FORM NO. 98

Motion to Quash.

Kelly v. United States, 250 Fed. 947 (C. C. A. 9th Cir.).

Come now the said Daniel M. Kelly and Albert J. Galen, and hereby respectfully move the Court to set aside and quash the order to show cause made in said proceeding on the 1st day of February 1917, and the citation issued thereon, for the reasons following, to wit:

1. Because the information upon which said order was based and issued or made does not state facts sufficient to constitute a contempt of this court, in this, that the said information does not state the nature and cause of the charge or accusation attempted to be made therein.
2. Because the said information fails to state sufficient facts to put these contemners upon their defense.
3. Because it is apparent from the face of said information and the affidavit in support thereof that the averments of said information are not supported, either in whole or in part, by any affidavit of any person who witnessed the pretended acts alleged to constitute a contempt, or contempts of this Court, the only affidavit being that of the United States Attorney for the District of Montana, who therein swears that "the matters and things therein contained are true to the best of his knowledge, information and belief", and who is not stated or shown to possess any knowledge of the facts constituting the accusation.

L. O. EVANS,
W. T. PIGOTT,
F. W. METTLER,
FRANK C. WALKER,

Attorneys for Daniel M. Kelly and Albert J. Galen.

FORM NO. 99

Plea.

Kelly v. United States, 250 Fed. 947 (C. C. A. 9th Cir.).

In re Contempt of D. M. KELLY and A. J. GALEN.

This matter came on regularly for hearing at this time, the contemnors being personally present in court, and the United States Attorney, and his two assistants appearing on behalf of the United States. Thereupon, on motion of W. T. Pigott, Esq., it was ordered that the names of L. O. Evans, F. W. Mettler, F. C. Walker and W. T. Pigott, Esqs., be entered herein as attorneys for contemnors. Thereupon counsel for contemnors presented and filed a motion to quash the information herein, which motion, after due consideration, was denied by the Court and exception of contemnors noted. Thereupon counsel for contemnors presented and filed a demurrer to the information, which demurrer, after due consideration, was overruled and exception noted.

Thereupon each of the said contemnors pleaded that he is not guilty and plea of not guilty duly entered as to each.

Entered, in open court, February 7, 1917.

GEO. W. SPROULE,
Clerk.

FORM NO. 100

Judgment.

Kelly v. United States, 250 Fed. 947 (C. C. A. 9th Cir.).

(Title of Cause.)

This matter coming on regularly to be heard in open court on the 7th day of February, 1917, B. K. Wheeler, United States Attorney for the District of Montana, and Homer G. Murphy and James H. Baldwin, Assistants United States Attorney for the District of Montana, appearing on behalf of the United States, and L. O. Evans, W. T. Pigott, F. W. Mettler and Frank G. Walker, appearing as counsel on behalf of respondents, and after the conclusion of the testimony offered on behalf of all parties said matter was argued by counsel for the respective parties and thereupon submitted to the Court for its decision; and thereafter,

on the 13th day of June, 1917, the Court, after having fully considered said matter, rendered its decision herein, which is hereby made a part hereof, wherein and whereby the Court found that the accusations in the information are true and that respondents' conduct constituted misbehavior obstructing the administration of justice as charged, and that the respondents did commit a contempt of this court, and ordered and adjudged that for such contempt each of them is fined in the sum of \$500 and costs.

It is therefore considered, ordered and adjudged by the Court that the said Daniel M. Kelly and Albert J. Galen did commit a contempt of this court as alleged in the information herein, for which contempt it is ordered and adjudged that each of them be fined in the sum of \$500 and costs taxed at One Hundred Sixteen 65/100 Dollars.

Entered July 7, 1917.

GEO. W. SPROULE,
Clerk.

GROUP XII

PERJURY

- No. 101. Indictment for Perjury.
No. 102. Minutes of Court — Arraignment.
No. 103. Demurrer.
No. 103 a. Charge to Jury.

FORM NO. 101

Indictment for Perjury.

Vedin v. United States, 257 Fed. 550 (C. C. A. 9th Cir.).

**IN THE DISTRICT COURT FOR THE TERRITORY OF ALASKA, FOURTH
JUDICIAL DIVISION**

United States of America,
Plaintiff,
v
G. A. Vedin,
Defendant.

Count I

G. A. Vedin is accused by the Grand Jury for the Fourth Judicial Division, Territory of Alaska, convened at Fairbanks, for the regular March, 1918, Term of the District Court by Count I, of this indictment, of the crime of perjury, committed as follows, to wit:

That during the year one thousand nine hundred and sixteen, and especially during the whole of the month of December, 1916, said defendant, G. A. Vedin, claimed to be the owner of an undivided interest in and to that certain placer mining claim in the Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, known as the Iowa Association, situated at the mouth of

Poker Creek, a tributary of the Chatanika River, which said claim of ownership was supported by a notice of location which had been by him theretofore recorded in the office of the Recorder for the said Fairbanks Precinct.

That on the 2d day of January, 1917, the said defendant, G. A. Vedin, unlawfully, feloniously and knowingly, made a false affidavit in writing in words and figures as follows, to wit:

**"AFFIDAVIT OF ANNUAL LABOR.
48361.**

Territory of Alaska, }
..... Precinct, } ss.

G. A. Vedin, being first duly sworn, deposes and says:

That at the instance of affiant one of the owners of the following described placer mining claim known as the Iowa Association situated on mouth of Poker Creek, and Chatanika River, a tributary of Tolovana River in the Fairbanks Mining and Recording Precinct, Alaska, the annual assessment work for the year 1916 was performed between the 1st day of January, 1916, and the 25th day of December, 1916, and that the value of the said work or improvements is \$100.00/100 upon the said claim. The work or improvements consisting of, and placed with reference to the boundaries of the said claim as follows, to wit: Drill holes and other improvements about 100 feet from the Northern Boundary; and about 700 feet from the Western Boundary, on said claim. And that such work or improvements by the owner aforesaid.

The above-described work was performed by affiant et al.

G. A. VEDIN.

Subscribed and sworn to before me this 2 day of January, 1917.

(Seal)

ALBERT R. HEILIG.

A Notary Public in and for the Territory of Alaska.

Com. exp. June 18, 1917."

And on said day subscribed to the same and swore that the same and all of the allegations thereof were true as he verily believed, before Albert R. Heilig, who was then and there a duly qualified and acting notary public for the Territory of Alaska, and then and there duly authorized by law to administer such oath.

That the making of an affidavit of annual assessment work in

order to hold a placer mining claim was on said 2d day of January, 1917, and ever since has been required under and by virtue of Chapter 10, Session Laws of Alaska for 1915, which said act provides that upon a failure to make and record an affidavit that the annual assessment work has been done as required by said act, within 90 days after the close of the calendar year in which such work was done or the improvements made, that such claim shall be deemed abandoned and the claim subject to relocation.

That thereafter, to wit, on the 29th day of January, 1917, the said defendant filed the said affidavit for record in the office of the recorder for the Fairbanks Precinct, aforesaid.

That in truth and in fact, no assessment work for the year 1916 was performed upon said above-described mining claim as set forth in said affidavit or as required by law, all of which the defendant G. A. Vedin, knew at the time of making said affidavit as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Count II

G. A. Vedin is accused by the Grand Jury for the Fourth Judicial Division, Territory of Alaska, convened at Fairbanks, for the regular March, 1918, Term of the District Court by Count II, of this indictment, of the crime of perjury, committed as follows, to wit:

That during the year one thousand nine hundred and sixteen, and especially during the whole of the month of December, 1916, said defendant, G. A. Vedin, claimed to be the owner of an undivided interest in and to that certain placer mining claim in the Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, known as the Heckla Association, situated on Poker Creek, a tributary of Chatanika River, which said claim of ownership was supported by a notice of location which had been by him theretofore recorded in the office of the Recorder for the said Fairbanks Precinct.

That on the 2d day of January, 1917, the said defendant, G. A. Vedin, unlawfully, feloniously and knowingly, made a false affidavit in writing in words and figures as follows, to wit:

"AFFIDAVIT OF ANNUAL LABOR.

49089.

Territory of Alaska,

..... Precinct, ss.

G. A. Vedin, being first duly sworn, deposes and says: That at the instance of affiant one of the owners of the following described placer mining claim known as Heckla Association situated on Poker Creek, a tributary of Chatanika River in the Fairbanks Mining and Recording Precinct, Alaska, the annual assessment work for the year 1916 was performed between the 1st day of January, 1916, and the 25th day of December, 1916, and that the value of the said work or improvements is \$100.00/100 upon the said claim. The work or improvements consisting of, and placed with reference to the boundaries of the said claim as follows, to wit: about 300 feet from the Northern Boundary and about 200 from the Eastern Boundary, consisting of drill holes and other improvements on aforesaid claim. And that such work or improvements by the owner aforesaid. The above described work was performed by G. A. Vedin and others.

G. A. VEDIN.

Subscribed and sworn to before me this 2 day of January, 1917.

(Seal)

ALBERT R. HEILIG,
A Notary Public in and for the Territory of Alaska,
Com. exp. June 18, 1917."

And on said day subscribed to the same and swore that the same and all of the allegations thereof were true as he verily believed before Albert R. Heilig, who was then and there a duly qualified and acting notary public for the Territory of Alaska, and then and there duly authorized by law to administer such oath.

That the making of an affidavit of annual assessment work in order to hold a placer mining claim was on said 2d day of January, 1917, and ever since has been required under and by virtue of Chapter 10, Session Laws of Alaska for 1915, which said act provides that upon a failure to make and record an affidavit that the annual assessment work has been done as required by said act, within 90 days after the close of the calendar year, in which such

work was done or the improvements made, that such claim shall be deemed abandoned and the claim subject to relocation.

That on the 2d day of January, 1917, the said defendant filed the said affidavit for record in the office of the recorder for the Fairbanks Precinct aforesaid.

That in truth and in fact no assessment work for the year 1916 was performed upon said above-described mining claim as set forth in said affidavit or as required by law, all of which the defendant, G. A. Vedin, knew at the time of making said affidavit as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Count III

G. A. Vedin is accused by the Grand Jury for the Fourth Judicial Division, Territory of Alaska, convened at Fairbanks, for the regular March, 1918, Term of the District Court by Count III, of this indictment, of the crime of perjury, committed as follows, to wit:

That during the year one thousand nine hundred and sixteen, and especially during the whole of the month of December, 1916, said defendant, G. A. Vedin, claimed to be the owner of an undivided interest in and to that certain placer mining claim in the Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, known as the Dakota Association, situated on Poker Creek, a tributary of Chatanika River, which said claim of ownership was supported by a notice of location which had been by him theretofore recorded in the office of the recorder for the said Fairbanks Precinct.

That on the 2d day of January, 1917, the said defendant, G. A. Vedin, unlawfully, feloniously and knowingly made a false affidavit in writing in words and figures as follows, to wit:

"AFFIDAVIT OF ANNUAL LABOR.

48090.

Territory of Alaska,

..... Precinct, — ss.

G. A. Vedin, being first duly sworn, deposes and says: That at the instance of affiant one of the owners of the following de-

scribed Placer mining claim known as Dakota Association situated on Poker Creek, a tributary of Chatanika River, in the Fairbanks Mining and Recording Precinct, Alaska, the annual assessment work for the year 1916 was performed between the 1st day of January, 1916 and the 25th day of December, 1916, and that the value of the said work or improvements is \$100.00/100 upon the said claim. The work or improvements consisting of, and placed with reference to the boundaries of the said claim as follows, to wit: Drill holes and other improvements about 200 feet from the southern boundary and about 200 feet from the eastern boundary on said claim. And that such work or improvements by the owner aforesaid. The above-described work was performed by affiant and others.

G. A. VEDIN.

Subscribed and sworn to before me this 2 day of January, 1917.

(Seal)

ALBERT R. HEILIG,

A Notary Public in and for the Territory of Alaska.

Com. exp. June 18, 1917."

And on said day subscribed to the same and swore that the same and all of the allegations thereof were true as he verily believed before Albert R. Heilig, who was then and there a duly qualified and acting notary public for the Territory of Alaska, and then and there duly authorized by law to administer such oath.

That the making of an affidavit of annual assessment work in order to hold a placer mining claim was on said 2d day of January, 1917, and ever since has been required under and by virtue of Chapter 10, Session Laws of Alaska for 1915, which said act provides that upon a failure to make and record an affidavit that the annual assessment work has been done as required by said act, within 90 days after the close of the calendar year in which such work was done or the improvements made, that such claim shall be deemed abandoned and the claim subject to relocation.

That on the 2d day of January, 1917, the said defendant filed the said affidavit for record in the office of the recorder for the Fairbanks Precinct aforesaid.

That in truth and in fact no assessment work for the year 1916 was performed upon said above-described mining claim as set forth in said affidavit or as required by law, all of which the

defendant, G. A. Vedin, knew at the time of making said affidavit as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Dated at Fairbanks, Alaska, this 12th day of March, 1918.
A true bill.

R. F. ROTH,
United States Attorney.

GEO. M. SMITH,
Foreman of Grand Jury

The following are the names of the witnesses examined before the grand jury on the finding of the foregoing indictment:

JOSEPH H. REGNER,
STEPHEN A. WILSON,
SAMUEL R. WEISS.

FORM NO. 102

Minutes of Court — Arraignment.

Vedin v. United States, 257 Fed. 550 (C. C. A. 9th Cir.).

IN THE DISTRICT COURT FOR THE TERRITORY OF ALASKA, FOURTH DIVISION

United States of America, Plaintiff,
 v.
G. A. Vedin, Defendant. }

Now, on this day, came R. F. Roth, United States Attorney, came also the defendant, and being represented by his counsel, Leroy Tozier, the said defendant was brought before the bar of the court, and being asked if he was indicted by his true name and answering that he is, the said indictment was read to the defendant by the clerk of the court, and a copy of said indictment, including a list of the names of the witnesses appearing before the Grand Jury for the purpose of this indictment, was delivered to said defendant, and the defendant asking time in which to enter

his plea herein, or otherwise move against said indictment, the time therefor was set by the Court for 10:00 o'clock A.M., Thursday, March 14th, 1918.

CHARLES E. BUNNELL,
District Judge.

FORM NO. 103

Demurrer.

Vedin v. United States, 257 Fed. 550 (C. C. A. 9th Cir.).

IN THE DISTRICT COURT FOR THE TERRITORY OF ALASKA, FOURTH
DIVISION

No. 774 — Cr.

United States of America,	}
Plaintiff,	
v.	}
G. A. Vedin,	
Defendant.	

Comes now G. A. Vedin, the above-named defendant, and demurs to the indictment herein, and each of the counts and the whole thereof, and for grounds of demurrer alleges:

1. That the act of the Alaska Legislature under which said indictment is laid and upon which it is based, to wit: Chapter ten (10) of the Session Laws of Alaska for the year 1915, is unconstitutional and void.
2. That said purported act of the Alaska Legislature, under which said crime is charged and prosecution had, to wit: Chapter ten (10) of the Session Laws of Alaska for the year 1915, was not passed in accordance with the provisions of Section thirteen (13) of the Organic Act, under and by virtue of which the Alaska legislature is created and performs its functions.
3. That the facts stated in said indictment do not constitute a crime.

WHEREFORE, this defendant prays that said indictment be dismissed and defendant go hence without day.

Dated March 14, 1918.

LEROY TOZIER,
Attorney for Defendant.

CHARGE TO JURY

[FORM 103 a

Service of the foregoing demurrer and receipt of copy admitted
March 14, 1918.

R. F. ROTH,
U. S. Attorney.

FORM NO. 103 a

Charge to Jury.

Safford *v.* United States, 252 Fed. 471 (C. C. A. 2d Cir.).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES |
 v. |
FRANK D. SAFFORD |

The following charge was delivered by Hon. Learned Hand at the conclusion of the addresses of counsel on January twenty-seventh, 1917. The indictment was for perjury in false swearing before a Commissioner of the District Court in New York. The Commissioner was engaged in a preliminary inquiry for the purpose of holding one Rae Tanzer to bail upon the charge of using the mails for the purpose of blackmail. Upon that hearing the defendant Safford had sworn that the person who had accompanied Rae Tanzer to a hotel in Plainfield, New Jersey, was one James W. Osborne. The jury found the defendant guilty and he was sentenced to a term of nine months. Upon writ of error to the Circuit Court of Appeals of the Second Circuit the judgment was affirmed, 252 Fed. R. 471.

Hon. Learned Hand, D. J.:

Gentlemen, you have come to the end of a very long and fatiguing case. You no doubt are quite as glad as any of us that the end has come. You have heard all the evidence of the witnesses. You have heard at length the argument of both sides, and nothing remains now but for me to give you the instructions as to how you shall deliberate and form your verdict.

I will first discuss with you the questions of law which are applicable. This defendant is brought here upon an indictment for perjury, and perjury, as you probably know, is deliberate false

swearing in a judicial proceeding. The United States, like any other party who comes into a court of justice, must establish the facts which it alleges against the other party to the proceeding, and in this case, as the United States makes the allegations of perjury against the defendant it has what we call in law the burden of establishing those allegations. That only means that where a party comes into a court and does not succeed in making good what it says, it fails.

In this case, however; being a criminal prosecution, the degree of proof which the law requires is of a higher order of conviction than that which is required in a civil case. Possibly some of you are aware of the distinction which I have in mind. In a criminal case, the prosecution, whether it be the Government of the United States, or the People of the State of New York, or any other Government, must satisfy a jury beyond what we call a reasonable doubt.

There has been much definition of that term, most of it, in my judgment, not very illuminating. My own belief is that the best way to get into your minds what it signifies is to suggest to you some situation out of common life which would be analogous to that which you have before you here. If, for example, you were about to embark upon some enterprise which was of the utmost significance to you, or to your family, you would wish to be satisfied that it would turn out propitiously, and you would go over the different elements upon which success depended, and satisfy yourself in regard to each one, with a high degree of certainty. When you were so satisfied, you would embark upon that enterprise. Very good. The law regards this as an enterprise of high moment and seriousness, and it requires of you, when the liberty of the citizen is in question, that you shall be satisfied to the same degree of certainty, of each of the elements upon which guilt depends, as though it were a matter of high moment to yourselves, in which the risk of disaster would be serious.

The crime of perjury consists of two elements, first, that the fact to which the defendant testifies is false, and second, that either he knew it was false or that he did not believe it was true. In this case the facts to which the defendant swore were that James W. Osborne was the man who accompanied Rae Tanzer to the

hotel in Plainfield, on October 18th, 1914, and that he was the man who was known to the defendant by the name of Oliver Osborne on that occasion. It is, therefore, necessary that you should be satisfied first that James W. Osborne was not the man who accompanied Rae Tanzer on October 18th to Plainfield, and second, that the defendant, when he swore on March 24th, 1915, that James W. Osborne was the man, either knew that it was not true, or did not believe that what he said was true. If you find both those facts, then the guilt of the defendant is established, for the oath was taken in a judicial proceeding, and this Court has cognizance of any perjury committed in that proceeding.

Now, gentlemen, oftentimes I think that juries, when they come to their deliberations, suppose that there is something technical, peculiar, and out of the common, in legal reasoning as distinguished from ordinary, common reasoning. There is nothing of the sort. It has been the characteristic of our laws from the outset that juries are supposed to apply the same mental processes to the evidence which they hear in the jury box, as they would to similar evidence outside, and in their common affairs. Disabuse yourself, therefore, of the idea that there is any such thing as legal reasoning as distinct from any other kind of reasoning. Use the same common sense which would apply in any of the affairs of your life.

There are, however, certain limitations which are put upon you. You have no right to consider anything which you have not heard in the box. Jurors, I fear, at times are disposed not to observe that admonition as carefully as the interest of justice requires and therefore I, at the expense of some time perhaps, am going to call to your attention just why it is essential that that should be done. You can see that it is a first requisite for any administration of justice that each side should be able to know what the evidence is that he has to meet. It is one of the first principles of fair dealing that in a dispute both sides should be compelled to make clear what the evidence is upon which they choose to base their case, and therefore, if you permit yourself to be influenced in any way by considerations which have not come before you; if you think by perhaps a conviction of some

over-shrewdness on your part, that you can tell more about the facts than has been brought out in the witness box, you run a danger of doing a great injustice to one side or the other, for you are then proceeding upon that which it is quite impossible for the side against which you use it, to meet, and you are depriving whichever side you use this evidence against, not merely of a technical rule of law, but one of the first principles of honest dealings between man and man.

There is another consideration which it is proper for me to refer to in this connection. You must distinguish between the mere arguments which are made before you and the evidence upon which these arguments rest. The repetition of an argument made to you oftentimes acquires by that mere fact the force of evidence itself. You must carefully distinguish, you must carefully analyze the basis of the assertions which are made to you by either side, and see what bases they have in the evidence.

If you will therefore not assume anything to be true, which has not been proved, if you will not assume when I rule out a question that the answer would have been one way or the other, and if you will carefully see to it that all the conclusions that you make have some basis in what you have heard here, you will be doing your duty. But if, on the other hand, you assume from any questions which I have ruled out, or from any question which has been answered, more than has been answered, you will run a risk of real injustice.

These are the only remarks which I need to make to you on the subject of the law. In those respects, what I say to you is binding upon you, and you must take it, because on me falls the duty of instructing you in regard to the law, but you are yourselves the final and absolute arbiters of the facts, and anything I may say to you about the facts is advisory only. You are free to disregard it. I trust that it will be only an accurate statement of the evidence, or of such inferences as are fairly deducible from the evidence, and if my memory by any chance may fail me in respect to the evidence, I hope, and I am quite sure, that counsel will correct me when I am through, but I say by way of premise that what I tell you now, and my discussion of the facts, is to be correct from your own recollections, so far as you have them, or if you are

in doubt as to the evidence, you may ask for any portion of it, and I will see that it is read to you.

The story with which we are concerned, gentlemen, seems to have begun on October 17th, 1914. It began in a little commonplace enough way. This lady, Miss Rae Tanzer, who was a textile worker, in Farrington & Evans on Fourteenth Street, in New York, left her work on Saturday afternoon, that day, and walked up Fifth Avenue to Fifty-ninth street. She was going west to the Circle to get into the subway and go home. On her way she passed a man who was walking in the opposite direction, and by some subtle sympathy or interchange, they smiled at each other. She passed on, going into the Park, and sat down on a bench to read a book. He came up and sat beside her. Their acquaintance there began. He told her that day that his name was Oliver Osborne. He seems to have been a person of somewhat flashy appearance, at least he wore a good deal of jewelry, in particular a large horseshoe pin, made of sapphires and diamonds, which, as I recall it, he wore in his cravat.

In that talk in the Park he told her that he lived at the Hotel Netherlands, which, as you know, is right across Fifth Avenue, on Fifty-ninth street, very near where they were sitting. The acquaintance was mutually agreeable, and he went home with her. Indeed, it had proceeded to that degree of intimacy that by the time they got home he asked her to come and dine with him, and I think go to the theater, which she agreed to do. They dined together, and before the evening was over, according to her story, she had agreed to marry him. She said then they agreed to meet on the next day, and he did meet her the next day, going up to her house in the Bronx, and they came down town about ten o'clock, wandered about the Battery for a while, and finally concluded that they would go to Plainfield, which they did. At Plainfield they went to the Hotel Kensington, and there — I need not detail to you the length of time they spent there. They got there a little before one, had dinner, had a chat with the defendant, who was the clerk, saw Mr. Kitchen, who was the proprietor, went out for a walk, came back and looked for some rooms. As they had no luggage, the question was raised about the propriety of their staying under the circumstances, but they

registered under the name of "O. Osborne" and "Mrs. O. Osborne." They occupied a room for a short time, during which the woman was seduced by the man, and then they left, without paying their bill, and came back to New York.

The acquaintance, which began in that way, continued during that week and the next. On Monday he saw her but Tuesday he did not, and she, having given him by mistake the wrong telephone number of her shop, began to look for him, thinking she might lose him. She inquired at the Netherlands whether there was a man named Oliver Osborne there, and was advised that there was not, but that a man named James W. Osborne sometimes came there. She then went to the New York Athletic Club, found that there were two Osbornes, and then she concluded, and I think no one questions that her conclusion was honest at that time, that the man who gave himself the name of Oliver Osborne, was in fact James W. Osborne, one of the members of the New York Athletic Club. On Wednesday she wrote him a letter directed there. He saw her that day, I think, or the next. They went to a hotel together on Saturday of that week, the Knickerbocker Hotel. He saw her off and on from time to time, according to Wax's story, until about the middle of November. By her own story it was until some time early in December; according to James W. Osborne's story not at all, because he denies that he is the man. I give you the three versions of the three possible persons connected.

At any event, it soon became apparent that he had given her up, had deserted her, and she wrote him a number of letters, which I will take up with you later, all of these letters being addressed to the New York Athletic Club, until the letter of December 27th, 1914. This letter she addressed to the office of James W. Osborne, and it was of a different character from the other ones. He got it, and that matter I shall take up with you later.

On February 11th — I must tell you, in order to make this intelligent, James W. Osborne's version for the time being, but its truth I will take up later — on February 11th he says he went to the Athletic Club and first received all the letters which she had sent him to that place, some seven in number. That, taken in connection with the letter of December 27th, he says, showed him

that there was trouble of some sort, and he therefore had her called up on the telephone by a stenographer, or assistant of his, a woman, and spoke to her himself. She declined to come down to see him, and on February 16th she wrote him another letter, of a distinctly minatory character. On February 18th he took the letters which he had received up to that time, gave them to Hawley and Haskins, one a friend and the other a City detective, a member of the Police force, and they went up and saw her, and had an interview with her. She still declined to come and see him.

Nothing further happened so far as the evidence shows, for a month, but on March 16th she served him with a summons, which was followed two days later by a complaint in the Supreme Court of the State of New York, for breach of promise and seduction, asking for damages in the sum of Fifty Thousand Dollars. Osborne answered the case at once, and attempted to get it to a hearing in the Supreme Court. The next day, on March 19th, he took the letter of February 16th to the Federal District Attorney, swore out a complaint, and obtained a warrant against Rae Tanzer for misuse of the mails under a plan to defraud. On that day, as I understand it, it is conceded by both sides, the witness Wax appeared at Osborne's office, and later, at his house, and told him and his wife that he was the man, who had been the seducer of Rae Tanzer. As they say, Wax assured them that he would be a witness for the case, but that he must go back to Boston, which was his home, as was just then the case. Wax did not keep his promise, but disappeared from New York, on Sunday, the 21st of March, and from that time to December last, with the possible exception of one appearance in the summer of 1915, he is not shown to have been in New York at all.

Meanwhile, the hearing was coming on, on the proceeding to fix bail on Mr. Osborne's complaint in this court, before the United States Commissioner, and it is then that the defendant first appeared in the case, since the date when he saw Rae Tanzer and her Oliver in the Kensington Hotel.

David Slade, and Herman, and McCullough, and I think a chauffeur, on Sunday, the 21st of March, having located Safford at Greenwood Lake, a Summer resort of New Jersey, rode out

there in a motor and got him to come here. They reached here late that night. That was Monday night.

He spent that night at David Slade's, and on Wednesday following, he swore that James W. Osborne was the man who appeared at the Kensington Hotel, and who signed his name as Oliver Osborne. After giving that testimony, he went back to Greenwood Lake, gave up his place there, telling Kasse that he would be needed here as a witness in the case, came back here, and lived either at Rockville Centre, at Long Island, or in New York, until he was arrested on April 3rd, which was a week from the following Saturday.

That is the complete narrative, gentlemen, or setting of the evidence which you have to consider here, and the first question which comes up, obviously is, Who was the man that accompanied this lady to the Kensington Hotel on the 18th of October? Well, there are various ways of approaching that question. You have heard them discussed by both sides. I don't think one way is particularly better than another. I merely, as my own mind ran, divided the proof into various subdivisions as they occurred to me. Of course, they are not significant in any sense, but they happened to fall naturally into that division. First, suppose we compare the two possibilities, because there are only two. One is Wax, and the other is James W. Osborne. Everyone concedes that, and suppose we take the antecedent likelihood, which of the two was more likely to be the man who accompanied the little girl there on that day? That by the way of first approaching the question.

On the one hand we have Osborne, whom everyone concedes is a man well known, who was a man at that time fifty-six years old, with a grown child and a wife, a man who had run for public office, a man with whom many people were acquainted. You must decide how likely it is that he would have undertaken such an enterprise of gallantry as this concededly was, with the risk involved. Concededly he went around, whoever it was, quite openly, in public restaurants; by the girl's story, which we have no reason to doubt, whoever it was, told her that he lived in the Netherlands Hotel, the place where she says, she subsequently found Osborne was known. He used the name "Osborne" and

what seems to me not without significance, when he left the hotel he failed to pay a bill of a dollar and a half. I confess it seems to me a strange thing, unless he was very short of money, that engaged in such an enterprise he should have, for such a little amount, left in the memories of those who were there, such an incident as that.

On the other hand what of Wax? Wax, as both sides concede, is a thoroughly bad man. He has been convicted of forgery; he has been convicted of grand larceny, and he is by his own confession, a liar. He is one of those men who now rises to the surface, now is submerged, and lives half above, half below the level of society, as far as the evidence shows. You will remember, if the other witnesses in the case are to be believed, that he has a marked predilection for enterprises of just this character, for, there are three women, who have come forward, of two of whom he was successful in engaging their affections, and of one of whom he made an effort to do so, the Unger girl. Which was more likely, which fitted better into the setting of the man who met Rae Tanzer, and in less than twenty-four hours succeeded in engaging himself so deeply in her affections?

That is the first instance. Moreover, you are entitled to consider in that inquiry the character of the letters which are conceded to have passed from the Oliver, whoever he may have been, and his beloved, Rae Tanzer. We have three of them. I think it is quite appropriate for you to consider whether the language of those letters is more appropriate to what you know about Wax than to what you know about James W. Osborne. I know that the experts have said that some of these letters were written with great circumspection, apparently deliberately attempting to conceal the character of the writer. It occurred to me that it was rather a strange thing, if it was necessary to write the letters with so much circumspection, and so much disguise, that they should have been written at all, because, so far as we know, the occasion of them in view of the ready access of the girl to her lover, was not pressing.

I shall not read the letters over to you. The one of October 22nd, is the one from the Hotel Walton, and one thing in it occurs to me that perhaps is of some significance. It is a mere

slip of grammar, perhaps anyone might have made it, but it is rather a poor one: "When I look out of the window and see the trees and their leaves are waving together, it seems to me as if they were slapping their hands together for joy for you and I." Perhaps anyone might have made that. The subsequent letter is rather a strange letter for a lover, but I don't know myself as to what the habits of all lovers are. This concerns itself mostly with the condition of his stomach. He was feeling sick. Well, I shan't go over them all, gentlemen. Their phraseology will be before you; you will have to consider how far those letters fit a man like Osborne, and how far they better fit or worse fit a man like Wax, and when you have concluded which of the two men seems to fit the frame better, you will have some antecedent probability, some beginning toward a solution.

But of course, that is not all. There were people who necessarily saw Rae Tanzer's lover, and they have testified as to who he was. Four people testified that the lover was James W. Osborne. The girl herself, whom you have heard on the stand, insists that it was he. Her two sisters, Dora and Rose, who saw the lover, whoever he was, up in Aldus Street, in the Bronx, also say that it was he. Safford, the defendant here, says that it was he. One witness, Lapp, who was the electrician, or carpenter, at the Hotel Kensington, and who saw the couple while they were discussing the question of real estate, does not identify Wax as the man, but says positively that Osborne was not the man. He, you will remember, is uncertain; his memory does not serve him as to whether Wax was or was not the man, and he declines to say that he was, but he does say that Osborne was not.

I don't know that it will serve much purpose for me to go over the names of the different witnesses who identified Wax as Rae Tanzer's lover. At the hotel, you will remember Kitchen, the proprietor, says so. Subsequently either late in October or early in November, Rae Tanzer went to the Psychological Research Society, I think they call it, on a mission connected in some way with this matter, the question of herself and her lover, and after she had had some talk there, Christensen and his stenographer, Miss Hunt, followed her, and Hartman also, the lawyer, followed, and they saw a meeting between herself and her Oliver at Columbus

Circle, and those three said that they recognized Wax as the man, and not Osborne.

Mrs. Silverstone, you will remember, who lived in the apartment across the court or light shaft between the Tanzer and her own apartment. She says she looked through and she saw Wax at dinner. I don't know how she impressed you, gentlemen. She impressed me as a singularly direct and honest witness. Of course, you are to judge of her entirely on your own account.

Miss Unger says that in the Autumn of 1914, a man, who addressed letters to her Oliver Osborne — you have the letters, one of them is signed "Oliver Osborne", the other as "O. H. O." — was living across the way from where she worked in Bloomingdale's, and that he is the man who now appears as the man who at that time used the name "Oliver Osborne."

Mrs. Denham with whom he boarded at the time, speaks also of a man who went under the name of Bacon, I think, but who was this man Wax, and who got several letters under the name, "Oliver Osborne." If you believe those witnesses that will be evidence that the man who used the name "Oliver Osborne" then may have been the same man who used the words "Oliver Osborne" at the Kensington Hotel in October.

Miss Kaiser, to whom he was engaged, and her sister Mrs. Menkeler, and two boys, one Mrs. Menkeler's boy and another a nephew, swore that Wax used the name "Oliver Osborne" and that he came up and visited them at the time he was engaged to Miss Kaiser.

Finally, Miss Brooke, or Nye, and her sister, Mrs. Miller, do not identify Wax as the man who used the name "Oliver Osborne", but as the man who wrote certain letters. She, you will remember, was married to him, and those letters are conceded by everyone to be in the same hand as the letters which were written under the name "Oliver Osborne."

Those are the living witnesses on both sides, gentlemen, who testified to the actual identification of the lover of Rae Tanzer. Now what are the relative motives which may have actuated these different witnesses, at the time when they first swore, because it is only fair I think, to suppose that once having taken a position and sworn in relation to it consistently, they, for pru-

dence, if nothing else, would adhere to what they said. What, at the time that they first swore, was the motive? Rae Tanzer, at the time that she first swore to that which was in the complaint that she brought in the action against Mr. Osborne, was claiming for herself Fifty thousand dollars. Her two sisters lived with her. Safford's motive, if any, I will reserve until I take up the question of belief.

On the other side, the defense challenges the motive of the other identifiers, upon the theory, as I understand it, that they have all been suborned by Mr. Osborne, that he is the center of a great web which radiates in all directions, and which included these witnesses; that he is a man of such influences in the community that he can proceed in reaching and including and corrupting the motives of these witnesses who have sworn to the identification. And, gentlemen, if that be true, if there be any evidence of that, of course you are entitled to find it, but the mere assertion of it is no evidence; unless you will find some evidence for it, you would have no right to assume it. Some fair inference from what you have heard here must be the basis of any such assumption. So much, therefore, for the question of identification.

There are two questions which perhaps I ought to refer to here, two matters of identification which do not depend alone upon the testimony of witnesses. I speak of the sapphire and diamond brooch and of the "Wooster" watch. When Wax was arrested there was found upon him a pawn ticket for a horseshoe diamond and sapphire brooch, which was obtained from the pawnbroker in Chicago, where it was in pawn, and has been brought here and put in evidence before you. The stones are set in a sapphire face, with a gold back. It has a pin upon it. Miss Kaiser, Miss Unger and Miss Rae Tanzer, and I think some other witnesses, swore to Oliver Osborne's possession of a brooch of that character. It is true that Miss Tanzer refuses to identify the brooch in evidence as the one which was the one she saw on Oliver Osborne, because, she says, it was set in white metal, while the fact is that it is in white metal, but the back is of gold, and there is now a solid pin on the back instead of what she described as a temporary pin. I think those are the only differences which she points out to you between the brooch which Oliver Osborne had and the brooch

which is here. But the answer is, James W. Osborne procured such a brooch, that he had it himself and put it in pawn; that he went out to Chicago or had someone go there and put it in pawn, and then put the pawn ticket on this man Wax.

The next is the question of the Wooster watch. When apprehended, you will remember, Wax had upon his person a good hunting case watch, with the name Wooster upon it. Miss Kaiser had sworn before she went on the stand here, and before Wax was apprehended, that her lover, who went by the name of "Oliver Osborne" you will remember, had a watch with the name "Wooster" upon it, and she said, having failed to get into communication with him, because he deserted her, whoever he was, just as the lover of Rae Tanzer did, whoever he was, she wrote him a letter under the name of Wooster, because she says that was the name in the watch, and as she had failed with "Oliver Osborne" she thought that might be the name. That I think was in November, 1914, and we have, gentlemen, a record, written record, in the registry books of the United States post office, that there was a letter sent to Wooster in November, 1914, at an address between Lexington Avenue and some vague address which did not insure its delivery, and it was never delivered. I call your attention to that, gentlemen, and ask you whether you think, and how you think, if you do, that there could have been a fabrication of such facts as that.

I have suggested to you two ways in which you might determine the identity of this man, first, as I said, by the general character of the party, and, secondly, by the identification of the witnesses who swear as to whether they saw him. Another way which might also be used, would be the conduct of the three possible persons to the affair, Wax, Osborne, and Rae Tanzer. What is to be inferred from that? Wax says that he left the girl, did not see her until after the middle of November. He is not sure when. There is evidence, as you will remember, from Miss Kaiser that with her he engaged in the lovemaking about the same time along in November.

We find him on March 19th about to leave. The affair had at that time got publicity in the newspapers. He says that the reason why he came to Mr. James W. Osborne was that he was

actuated by motives of generosity. Well, I much doubt that. He may have been looking for money, or he may have been looking for, I don't know what. I hardly myself, if I were in your place, should believe that he went there for the reason that he gives, but that is perhaps not of great consequence anyway. However, it seems to be conceded that he went there, whether he went there because Osborne hired him to go there, or whether he went there for some motive of his own, is one of the questions you are to determine. It apparently got too hot for him. His record, as you know, is bad, and he left about the 21st or 22nd.

If Mr. James W. Osborne did, as the defense insists, hire him to impersonate himself, at least he was unsuccessful. He did not get a good bargain, because he disappeared as we all know, and he did not appear at all until long after the civil suit had been decided, that is, had been put out of the way, discontinued, and after several trials, which arose out of the complaint in this court. And it was only in December of last year they succeeded in getting him. So much for Wax.

Now, what of Osborne? Of course, there we have the strongest possible conflict. He says the first he knew at all about Rae Tanzer, or anything about her, was the letter of December 27th. He thought that letter was from either a crazy person, or that there had been some real mistake, or that he was being made the victim of a blackmailer.

However, he did not do anything about that letter, and he could not do anything about that letter because there was no address on it. He went along until February 11th, as he says, and then, you will remember, he went to the New York Athletic Club, and at that time he got seven letters, which he said had been lying there. This is one of the sharpest issues of the case. Of course, the defendant says that that is a fabrication on his part, that he got the letters before. You will remember that the first of those letters was written on October 21st, which is the Wednesday after Rae Tanzer met her Oliver. Another letter, which was mailed, was on the 27th. I am purposely omitting the letter of October 24th, and another on November 6th. How are we to conclude whether Osborne is telling the truth when he says that he got those letters for the first time? You will recall that according to

the story of Rae Tanzer, he went under an assumed name, Oliver Osborne. These letters which were sent to him, were directed to James W. Osborne. Therefore, if he did get them before the middle of November, or perhaps early in December, he knew that his disguise had been penetrated, and he also knew from some of the expressions in those letters that the girl was charging him with being the father of her child. Now, it is a pertinent inquiry for you to ask yourselves whether you think under all the circumstances he would have continued the relationship with her, if he had known that his disguise was already taken from him, particularly in view of the extremely serious nature of the relations as they had developed. Of course, he may have done so, may have been so reckless as to have done that. You may conclude so, but I suggest to you that you consider how far that question has any bearing upon the facts.

Moreover, you may ask yourselves, what had occurred if he had the letters all along, what occurred on February 11th particularly which should have made him select that day to call her up, as he concededly did call her up, and had the talk with her, the talk which provoked her letter of February 16th. He sent his friend Hawley, and the police detective Haskins to see her on the 16th, you will remember, and a very sharp point of controversy in the case was as to whether they had at that time the only remaining letter which Miss Tanzer wrote, concededly wrote, and that was the letter of October 24th. Wax says that she gave him that letter and he gave her the letter on the 19th, when he first came and saw Osborne. A great point is made of the fact that this letter is proven to have been in the possession of Osborne, or of Hawley, who must have got it from Osborne, before the 19th. The evidence of Rae Tanzer on that point is that she saw it in the possession of Hawley on that day, a letter which she describes as having crosses, crossing out the name Farrington & Evans. Before the Congressional Committee, she spoke of it as having stripes across it. You saw the letter of October 21st, which is the other blue letter. There is one stripe left to cancel the Farrington & Evans mark on that letter, whether there were more or not, is not now apparent, because an end of the envelope has been torn. There

is no evidence in the case except of Rae Tanzer, and of O'Farrell, that Hawley or Haskins had that letter in that interview. You will remember the testimony of Hawley in that respect. There was considerable controversy about it. In saying that there is no evidence, I must refer you to just that testimony if you wish it. Perhaps I can read it to you and you can judge for yourself now. Of course, the question as to whether it is evidence or not is the question for you to determine for yourself after you have read it. Concededly the only thing on which it depends is what Hawley said on another trial.

"Didn't Mr. Wilcox impart to you this information, or substantially this, that a blue letter that you and Mr. Haskins had when you called there was a blue letter and an envelope containing the business imprint of Farrington & Evans and having several crosses in ink above the imprint of the envelope?"

There was some colloquy. The answer was "No."

"Q. Did you see such a letter? A. Yes, I remember it.

"Q. Where did you see it, in Mr. Osborne's office? A. Yes.

"Q. There is no doubt about it at all, is there? A. No." It is that testimony on which the defendant relies to show that he did see it.

The rest of the testimony which the Government says qualifies that, is this:

"Q. Where did you see it? A. In Mr. Osborne's office.

"Q. There is no doubt about it at all? A. No. sir.

"Q. Now tell this jury your recollection of the contents of that letter? A. That letter, the letter that Mr. Haskins took, he picked out himself, was a blue letter, and it spoke about a mixup in the telephone numbers."

The rest is of no consequence, I think.

The letter which speaks of the mixup in telephone numbers was the letter of October 21st, and that letter was concededly sent to the New York Athletic Club, and you will have to make your own deductions, but, as I tell you, my instructions to you on that are not binding. I leave that testimony for you to determine from it. O'Farrell says, however, that Haskins told him that there has been such a letter. Well, so much for those two persons of the trinity in question.

Now, coming to Rae Tanzer. I think there is no doubt that on October 20th, two days after the affair at the Kensington Hotel, this girl concluded that her lover was James W. Osborne. I don't see any other explanation to give for the fact that she wrote those letters to the New York Athletic Club, and kept writing there. The contents of the letters themselves suggest that. She says, "I know how to address you. I will tell you afterwards." And it hardly seems possible that at that time she could have already planned anything of a blackmailing character. I don't know whether the Government concedes that or not, but that is my interpretation of it. The letters seem to show that some time in November or December, he either had left her altogether or he was slowing up in his attentions, because the letters speak — speak of "Come back to me"; "don't leave me" and expressions of that character. On December 16th, apparently she learned that he went away. He might have gone to Birmingham, Georgia, for she says that when he gets back from Birmingham, Georgia, she will be glad to see him.

In the letter of December 27th, she spoke of having seen Osborne on Christmas Eve. Wax was at that time in the City but he had left her, if it was he. Two possible explanations seem to me open for the letter: She, assuming that Wax was her lover, had discovered at that time that she had written these letters to Osborne, and that she had made a mistake, and she was then framing in her own mind a subsequent proceeding against Osborne, or if as a matter of fact, Osborne was her lover, she had seen him, and this was the letter in which she was threatening him with some action in regard to money.

When I say "threatening", I will tell you what I mean: "It is too late. You have ruined my life, and I will hold you to your promise. I have kept this trouble to myself, but cannot stand it any longer. Therefore I will have to seek help through other sources. I want no publicity but there is still a little pride left in me, although you have taken most of it out of me." . . . "My meeting you Christmas Eve was by chance. You were taken by surprise, weren't you?" "Will wait to hear from you till Saturday next, and then I shall not write again." That is the last letter, except that of February 16th, which was after the

telephone conversation when Osborne says he had when he first discovered the letters.

In that letter she upbraids him for having two dummies to speak for him. Now, as a matter of fact, he had spoken to her himself. There was one dummy, but not two, and she also encloses to him his photograph. I don't know how it will strike you that she should enclose to him his own photograph. To me it seems that the purpose of that probably was to show him that she knew him when she saw him, that she could pick him out, and it seems to me that that was rather a strange thing to do, if he had been with her. Would there be any trouble of picking him out when she saw him? How you may view it, I don't know.

Well, we come along next to the recantation. You have heard all the testimony about that? I shall hardly do more than allude to it. In the recantation, when Spielberg was her attorney, she took back her statement that Osborne was her lover, and she says that that was extracted from her not voluntarily, but by a practical coercion by Spielberg. I am not going into that question — because it is a long one, and only a side issue in any event, except to say that before the Congressional Committee in April, 1916, she said that she had told her sister that she thought before Houghton that Osborne was not the man. At that time she was in Washington. She says she did it because she wanted still to protect Spielberg, but certainly it throws some light on the reliability to be attached to her testimony.

Gentlemen, the next question I will ask you to consider is the question of the handwriting. There have been experts on both sides here as to whether Osborne wrote these letters of Oliver Osborne; two saying that he did, and one saying that he did not. Well, an expert on handwriting, insofar as he judges merely from the appearance of the handwriting, has no other facts on which to base his assumption than anyone else. He may have a wider experience, he may have a greater facility, or, he may have a greater ability, but if he does not use chemicals, so far as he judges from the appearance of the writing, his opinion is not conclusive upon you. It is a question you must determine yourselves, whether your opinion is that they were written by the same person or not, and so there is no objection whatever to your taking these

letters, as you undoubtedly will, comparing them of your own accord, and observing whether you think there is a difference between the handwriting of James W. Osborne and the handwriting of these Oliver Osborne letters.

Of course, it would be quite impossible for me to go over all of them together with you now, but I call your attention to two things. In every signature of Osborne, the "O" and the "s" are joined together. In every ink signature of Osborne the "s" and the "b" are separated. In some of the pencil signatures the "s" and the "b" are joined together. In all of the Oliver Osborne letters the "O" and the "s" are separated, and the "s" and the "b" are joined together. I think in all the Oliver Osborne letters the "O" is not brought down, but is finished up at the top, and you will remember that peculiarity in the tail or end of the "y." I think in every case, the tail of the "y" is to the right, instead of as is generally the fact, coming down, turning to the left and crossing. It is turned to the right and crossed back, and then sometimes crossed over to the right again. I think that is a peculiarity of the composition of the letters of James W. Osborne, conceded standards of James W. Osborne, in every instance.

In some of the cases the opinions of the experts were formed by what seemed to me a curious practice, that of taking letters out here and there, single letters out of single words from a whole context, and piecing together a word. They cut out a letter where they thought it had a resemblance to a letter we will say in the Oliver Osborne letters, then took another letter from somewhere else and put that next and so built up a word. Some inferences were based on that, and that seemed to be rather a strange basis for inference. How you regard it, I don't know.

The only other issue which is to be determined by you, is the question of the so-called alibi or presence of James W. Osborne in the Bar Association of the City of New York, on the 18th day of October, 1914. You will remember that the first evidence in that respect comes from the testimony of Mr. Osborne, of Smith, Osborne's friend, and of Peckham, his clerk; as to their meeting at his house and having luncheon there on the morning of that day. They say they went to the Bar Association and were there all the afternoon. Now, the records of the Bar Association,

kept in due course, show that a room was engaged by Osborne on that day at from two to three o'clock. It does not show whether it was engaged by telephone, or whether it was done at the time he entered the building, and went up to the room. Also, the records of the Bar Association show that Mr. Stern was in the room adjoining. Mr. Stern's story, and as far as it appears, there is no possible bias indicated on the part of Mr. Stern, (though you may impute a bias if you choose), is that he was troubled by Mr. Osborne on a day which he does not recall at all, except that it was a Sunday. He remembers what brief he was writing, and he was troubled by the noise he was making; that he was a very unusual man. Mr. Newton, the stenographer, says the door of his room was open. Mr. Stern is not clear whether the door was open or not, and that he was so annoyed and irritated he thought he might step out into the hall and look in, and he stepped out into the hall and looked into the room, and there he saw Mr. Osborne. Mr. Newton, the stenographer, says he did not do that but he knew Mr. Osborne's voice and he recognized it. The day when they were there they do not recall from their memories, but the records show that that day was the 18th of October. Mr. Carey had a room opposite, and he did not hear Mr. Osborne. Whether you think the evidence that Mr. Carey did not hear, and therefore did not remember hearing, is equal in weight to the testimony of Mr. Stern that he was troubled and walked around, is a matter for you to decide.

Well, gentlemen, that is all I have to say about the question of who was the man. Of course, if you conclude that Osborne was the man, or rather if you have doubts as to whether he was not the man, the case stops there, and your verdict would be for the defendant. If you conclude that Osborne was not the man, and therefore by necessary implication that Wax was the man, the question comes up as to whether Safford may have been mistaken, because even if he was reckless in his testimony, why, then the case is not one of perjury. On that, the evidence, as you will remember, is of his relations with the attorney for Rae Tanzer at the time, and the testimony in the room down below, his coming in with McCullough, who came down with him, and of McCullough's nudging him, and pointing out Osborne. How

much credence you put on that is a question for you to determine. Also, you are entitled to consider on this branch of the case the extent, of McCullough's presence with him afterwards at Rockville Center and elsewhere on that day, after the hearing, and the general relations between him and the attorneys for the defendant and Rae Tanzer.

Well, that is really all I have to say to you gentlemen. The case has been a long one. It has greatly tried your patience. The matter is now in your hands. It is a question of great importance either way. Of course, it is of great importance to the defendant. On him will rest the implication arising from your verdict, and the possibility of his imprisonment. The case is important to the community if the crime has been committed. If this perjury was actually committed, it was a great wrong. It is the kind of thing that subjects, may subject any member of the community to just the kind of publicity which makes for the destruction of reputation, loss of money, and which would be most calamitable. Anyone may have at a Club or somewhere else a stack of letters which have been addressed to him, which might be a basis of claim for breach of promise. If it was done in this case, and if it goes unpunished, it is not without consequence in a community such as ours, and in a great City where publicity means so much. If you have any doubt as to who it was, that doubt must be resolved in favor of the defendant, but if you have no doubt, it is not a light matter. You must approach it as I have told you, only with the sense of the seriousness of the decision either way. You must approach it without any preconceptions. You must approach it only with a view of determining from the evidence which you have heard, not with any sense of rumor, or the imputation of counsel, or the atmosphere created by their repetition, but with a clear and amicable mind, determined to use your reason, and knowing only that insofar as you do not use your reason, the liberties of this defendant, and of the community which you protect, can be safeguarded, because, gentlemen, do not forget that in the end everything which is dear to every member of the community hangs on the conscience of a common jury.

GROUP XIII

INTOXICATING LIQUORS

- No. 104. Information — Intoxicating Liquors.
- No. 105. Order for Filing Information.
- No. 106. Plea.
- No. 107. Minutes of Trial.
- No. 108. Indictment — Intoxicating Liquors.
- No. 109. Order for Capias to Issue upon Return of Indictment.
- No. 110. Capias.
- No. 111. Order Taking Bail.
- No. 112. Order Overruling Demurrer.
- No. 113. Order on Trial Impaneling Jury.
- No. 114. Order on Trial Submitting Case to Jury.
- No. 115. Order on Return of Verdict of Guilty and Entering Motions for New Trial and in Arrest of Judgment.
- No. 116. Order Taking Recognizance after Verdict.
- No. 117. Order Sentencing Defendants and Allowing Bail Pending Writ of Error; Also Allowing Time for Bill of Exceptions.
- No. 118. Order Extending Time to File Bills of Exceptions.
- No. 119. Indictment — Violation of Act of May 18, 1917 — Liquor.
- No. 120. Indictment — for Larceny of Whiskey in Interstate Traffic.
- No. 121. Demurrer.
- No. 122. Order Overruling Demurrer.
- No. 123. Plea and Trial, Record of.
- No. 124. Trial Proceedings, Record of.
- No. 125. Trial and Verdict, Record of.
- No. 126. Motion in Arrest of Judgment.
- No. 127. Order Overruling Motion in Arrest of Judgment and Allowing Time in Which to File Motion for New Trial, etc.
- No. 128. Judgment and Sentence.

The author believes that the forms above enumerated are not only helpful in cases of a similar character, but contain also a nucleus for the drawing of documents of a kindred nature under the several provisions of the Acts of Congress relating to intoxicating liquors in cases not yet determined by the courts.

INFORMATION — INTOXICATING LIQUORS [FORM 104

FORM NO. 104

Information — Intoxicating Liquors.

Preyer v. United States, 260 Fed. 157 (C. C. A. 4th Cir.).

**THE UNITED STATES OF AMERICA, EASTERN DISTRICT OF SOUTH
CAROLINA, IN THE DISTRICT COURT**

At a stated Term of the District Court of the United States for the Eastern District of South Carolina, begun and holden at Columbia, within and for the District aforesaid, on the first Tuesday of November, in the year of our Lord, one thousand, nine hundred and eighteen, comes Francis H. Weston, as Attorney for the United States for the Eastern District of South Carolina, and upon his oath of office informs the Court that H. J. Preyer, late of Florence County, in the State of South Carolina, on the tenth day of October, in the year of our Lord one thousand nine hundred and eighteen, at Florence County, in the said State of South Carolina, in the said District, and within the jurisdiction of this Court, did unlawfully cause intoxicating liquors to be transported in interstate commerce into a State the laws of which prohibit the manufacture or sale therein of intoxicating liquors for beverage purposes, that is to say, the said H. J. Preyer did then and there cause intoxicating liquors to be transported in interstate commerce from Baltimore, in the State of Maryland, to Florence, in the State of South Carolina, the manufacture and sale of intoxicating liquors for beverage purposes having been and being prohibited in the said State of South Carolina by the laws of the said State, to wit, by an act of the General Assembly of the State of South Carolina, approved on the tenth day of January, in the year of our Lord, one thousand nine hundred and seventeen, which said intoxicating liquors, as aforesaid, were not transported as aforesaid by the said H. J. Preyer for scientific, sacramental, medicinal, or mechanical purposes; contrary to the form of the Statute of the United States in such case made and provided, and against the peace and dignity of the United States.

FRANCIS H. WESTON,
United States Attorney.

THE UNITED STATES OF AMERICA, EASTERN DISTRICT OF SOUTH CAROLINA, IN THE DISTRICT COURT

Personally appeared before me, Francis H. Weston, who being duly sworn, says: That he is United States Attorney for the Eastern District of South Carolina, and that the foregoing is true of his own knowledge, except as to those matters which are stated on information and belief, and as to those matters he believes them to be true, and that all of the matters in said information contained are stated and made by this deponent on information and belief, the said information being obtained from the records furnished him by a United States Commissioner by whom this matter was duly investigated.

FRANCIS H. WESTON.

Sworn to before me this 7 day of November, A.D., 1918.

R. BEVERLEY SLOAN,
(Seal) *U. S. Commissioner, Eastern District, S. C.*

FORM NO. 105

Order for Filing Information.

Preyer v. United States, 260 Fed. 157 (C. C. A. 4th Cir.).

THE UNITED STATES OF AMERICA, EASTERN DISTRICT OF SOUTH CAROLINA, IN THE DISTRICT COURT

The United States
v.
H. J. Preyer.

The United States Attorney for the Eastern District of South Carolina, having asked leave to file in this Court an information against the above-named defendant, H. J. Preyer, for having violated the provisions of Section 5 of the Act of Congress, approved March 3, 1917, on motion of the United States Attorney, it is: Ordered that leave is hereby granted for the filing of said information, and the Clerk of this Court is ordered and directed to this day file the same.

HENRY A. M. SMITH,
United States Judge, Eastern Dis. S. C.

30 November, 1918.

FORM NO. 106

Plea.

Preyer *v.* United States, 260 Fed. 157 (C. C. A. 4th Cir.).

(Title of Cause.)

The defendant, H. J. Preyer, upon arraignment, pleads not guilty this 8 day of March, 1919.

HENRY J. PREYER.

FORM NO. 107

Minutes of Trial.

Preyer *v.* United States, 260 Fed. 157 (C. C. A. 4th Cir.).

(Title of Cause.)

At a stated Term of the District Court of the United States of the Eastern District of South Carolina, begun and holden at Florence, within and for the said District, on the 4 day of March, A.D., 1919, among others the following proceedings were had, viz.:

Saturday, March 8, 1919.

The United States }
 v. }
H. J. Preyer. } Vio. Sec. 5, Act March 3, 1917.

This case having been called for trial, Mr. J. Waties Waring, Assistant United States Attorney, appeared for the Government; Mr. D. Gordon Baker for the defendant.

The defendant appeared in person and upon arraignment entered a plea of not guilty. Thereupon the following jury was duly empaneled and sworn, viz.:

Isaac Schwartz, Foreman	D. M. Dew
J. J. Workman	J. S. Berg
J. M. G. Eddy	C. H. Rivers
J. P. Smith	G. W. Willard
F. L. Howard	B. R. Heyward
E. T. Hodge.	J. O. Horne.

The following witnesses were sworn and examined for the Government: W. C. Eichelberger. Sworn and examined for the defendant: H. J. Preyer, Thos. G. Terry. In reply for the Government: W. C. Eichelberger.

Argument by Mr. Waring for the Government, by Mr. Baker for the defendant, and by Mr. Waring in reply for the Government. The Court then charged the jury and they later returned the following

Verdict.

We, the jury, find the defendant Guilty this 8 day of March, A.D., 1919.

ISAAC SCHWARTZ, Foreman.

The Court deferred sentence to Monday.

Monday, March 10th, 1919.

The United States }
v. } Vio. Sec. 5, Act March 3, 1917.
H. J. Preyer. }

The defendant in the above case having been convicted on Saturday, the sentence then deferred is now imposed as follows:

Sentence.

Whereupon, it is considered, ordered and adjudged by the Court that the defendant, H. J. Preyer, be imprisoned in the jail of Florence County for Six months, and that he pay a fine of Five hundred dollars and the costs of prosecution, and that he remain imprisoned in the said jail until said fine and costs are paid or until he is otherwise discharged by law.

In open Court, this 10th day of March, A.D., 1919.

*HENRY A. M. SMITH,
United States Judge.*

FORM NO. 108

Indictment — Intoxicating Liquors.

Morse v. United States, 255 Fed. 681 (C. C. A. 4th Cir.).

The Grand Jurors of the United States of America, duly impaneled, sworn and charged to inquire within and for the body of

INDICTMENT — INTOXICATING LIQUORS [FORM 108]

the Eastern District of Virginia, and now attending the said Court, upon their oaths present that Victor Downs, A. G. Backus and F. B. Morse heretofore, to wit, on or about the 15th day of July, A.D., 1917, did order, purchase and cause to be transported in interstate commerce, from Providence, in the State of Rhode Island, to a point in the Elizabeth River near Norfolk, in the said Eastern District of Virginia, and within the jurisdiction of this Court, a certain quantity of intoxicating liquor, to wit, three hundred and seventy-five gallons of whiskey; and the grand jurors do further say that at the time of the transportation of the said intoxicating liquor into the said State of Virginia, the laws of the said State of Virginia prohibited the manufacture and sale therein of intoxicating liquor for beverage purposes; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

SECOND COUNT

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present that Victor Downs, A. G. Backus and F. B. Morse heretofore, to wit, on or about the 15th day of July, A.D., 1917, did order, purchase and cause to be transported in interstate commerce, from Providence, in the State of Rhode Island, to a point in the Elizabeth River near Norfolk, in the said Eastern District of Virginia, and within the jurisdiction of this Court, a certain quantity of intoxicating liquor, to wit, (3) three hundred and seventy-five gallons of whiskey; and the grand jurors do further say that at the time of the transportation of the said intoxicating liquor in interstate commerce into the said State of Virginia, the laws of the said State of Virginia, prohibited the manufacture and sale therein of intoxicating liquor for beverage purposes; and the grand jurors aforesaid do further say that the said Victor Downs, A. G. Backus and F. B. Morse did not order, purchase and cause to be transported in interstate commerce as aforesaid the said intoxicating liquor from Providence aforesaid to the said point in the Elizabeth River near Norfolk aforesaid for scientific, sacramental, medicinal or mechanical purposes; contrary to the form of the statute in such case made and pro-

vided, and against the peace and dignity of the United States of America.

RICHARD H. MANN,
United States Attorney.
By HIRAM M. SMITH,
Asst. U. S. Attorney.

Witnesses:

Major CHARLES G. KIZER,
E. L. GYNN,
R. F. HOLLAND.

FORM NO. 109

Order for Capias to Issue upon Return of Indictment.

Morse *v.* United States, 255 Fed. 681 (C. C. A. 4th Cir.).

(Title of Cause.)

On motion of the United States, by their Attorney, it is ordered that a *capias* issue for the arrest of the said defendant, returnable forthwith.

EDMUND WADDILL, Jr.,
United States District Judge.

FORM NO. 110

Capias.

Morse *v.* United States, 255 Fed. 681 (C. C. A. 4th Cir.).

UNITED STATES OF AMERICA,
Eastern District of Virginia, ss.:

The President of the United States of America to the Marshal of the Eastern District of Virginia — Greeting:

We command you that you take F. B. Morse, if he shall be found in your District, and him safely keep, so that you have his body before the Judge of our District Court of the United States for the Eastern District of Virginia, at the United States Court Rooms, in the City of Norfolk, in the District aforesaid, forthwith to answer

a certain charge of violation of Act of March 3, 1917, whereof he stands indicted. And have you then and there this writ.

Witness, the Honorable Edmund Waddill, Jr., Judge United States District Court for the Eastern District of Virginia, at Norfolk, Virginia, this 13th day of November, in the year of our Lord one thousand nine hundred and seventeen and of our Independence the 142nd year.

JOSEPH P. BRADY,
Clerk U. S. District Court.
By D. ARTHUR KELSEY,
Deputy Clerk U. S. District Court.

Marshal's Return.

Executed this 19th day of November, 1918, by arresting the within named F. B. Morse, and have his body now in Court, as within I am commanded.

FORM NO. 111

Order Taking Bail.

Morse *v.* United States, 255 Fed. 681 (C. C. A. 4th Cir.).

(Title of Cause.)

This day came the United States, by their attorney, and the defendant, F. B. Morse, appeared in discharge of his recognizance, and thereupon the said F. B. Morse, and Leon C. Steele, his surety, each acknowledge himself indebted unto the United States of America in the sum of One thousand dollars, of their goods and chattels, lands and tenements, to be levied and to the use of the United States rendered, upon the condition that the said F. B. Morse shall be and appear in this Court on the 21st day of November next, to answer the indictment against him, and not to depart thence without the leave of the Court; then this recognizance to be void; otherwise to remain in full force and virtue.

EDMUND WADDILL, Jr.,
United States District Court.

FORM NO. 112

Order Overruling Demurrer.

Morse v. United States, 255 Fed. 681 (C. C. A. 4th Cir.).

(Title of Cause.)

This day came the United States, by their attorney, and the defendants' demurrer to the indictment being fully argued, was overruled by the Court, to which ruling the defendants excepted.

EDMUND WADDILL, Jr.,
United States District Judge.

FORM NO. 113

Order on Trial Impaneling Jury.

Morse v. United States, 255 Fed. 681 (C. C. A. 4th Cir.).

(Title of Cause.)

This day came the United States, by their Attorney, and the defendants appeared in discharge of their recognizances, and being arraigned, plead not guilty as charged against them in the said indictment. Thereupon the defendants, by their counsel, craved over to the writ of *venire facias* and moved the Court to quash the same, which motion being fully argued, was overruled by the Court; thereupon a panel of eighteen jurors, duly drawn and summoned by the Marshal, being examined by the Court, the defendants, by their counsel, challenged the whole array, no grounds being assigned, which was overruled by the Court, to which ruling the defendants, by their counsel, excepted. And the said panel being found free from legal exceptions and qualified to serve according to law, thereupon the Government and the accused respectively struck therefrom three of said jurors, to wit: William A. McClanahan, W. H. Gary, W. C. Whittle, Jr., S. F. Old, Edward C. Dean and George W. Jones, leaving the following twelve against whom there was no objection, to wit: Samuel Stutson, A. W. Tatem, John B. Brown, M. T. Friary, Henry Perkins, H. Tyler Smith, E. M. Ives, F. Nash Bilisoly, Willie Vaiden, Clarence C. Smithers, Paul Davis, and J. H. Blake, who were duly sworn the truth of and upon the premises to speak, and at the conclusion of the evidence for the Government,

the defendants, A. G. Backus and F. B. Morse, by their counsel, moved the Court to direct a verdict of not guilty as to them, which motion being fully argued, was overruled by the Court, to which ruling the defendants excepted, and thereupon the jury was adjourned until to-morrow morning at ten thirty o'clock.

EDMUND WADDILL, Jr.,
United States District Judge.

FORM NO. 114

Order on Trial Submitting Case to Jury.

Morse *v.* United States, 255 Fed. 681 (C. C. A. 4th Cir.).

(Title of Cause.)

This day came again the United States, by their attorney, and the defendants appeared in discharge of their recognizances. The jury appeared pursuant to their adjournment on yesterday, and at the conclusion of all the evidence, the defendants, A. G. Backus and F. B. Morse, by their counsel, again moved the Court to direct a verdict of not guilty as to them, which motion being fully argued, was overruled by the Court, to which ruling the said defendants, by their counsel, excepted, and having received the charge of the Court, to which the said defendants, by their counsel, excepted, as well as the refusal of the Court to include in its certain instructions offered by them, and having heard the arguments of counsel, the jury retired to their room to consult of their verdict and after some time returned into Court and reported that they were unable to agree, whereupon they were adjourned until to-morrow morning at ten o'clock.

EDMUND WADDILL, Jr.,
United States District Judge.

FORM NO. 115

Order on Return of Verdict of Guilty and Entering Motions for New Trial and in Arrest of Judgment.

Morse *v.* United States, 255 Fed. 681 (C. C. A. 4th Cir.).

This day came again the United States, by their attorney, and the defendants appeared in discharge of their recognizances.

The jury appeared pursuant to adjournment and retired to their room for further deliberation upon their verdict and after some time returned into Court having found the following verdict, to wit: "We, the jury, find the defendants guilty as charged in the indictment this 24th day of January, 1918. Clarence G. Smithers, Foreman."

Thereupon the defendants, A. G. Backus and F. B. Morse, by their counsel, moved the Court for an arrest of judgment, to set aside the verdict and grant a new trial, and a *venire de novo*, which motions were continued until Saturday next.

And thereupon, the said A. G. Backus and B. T. Backus, his surety, each acknowledged himself indebted unto the United States of America, in the sum of Two Thousand dollars, of their goods and chattels, lands and tenements, to be levied and to the use of the United States rendered, upon the condition that the said A. G. Backus shall be and appear before this Court on the 26th day of January, 1918, to abide the judgment of the Court and not to depart hence without the leave of the Court, then this recognizance to be void; otherwise to remain in full force and virtue.

EDMUND WADDILL, Jr.,
United States District Judge.

FORM NO. 116

Order Taking Recognizance after Verdict.

Morse *v.* United States, 255 Fed. 681 (C. C. A. 4th Cir.).

(Title of Cause.)

This day came the United States, by their attorney, and the defendant, F. B. Morse and Leon C. Steele, his surety, each acknowledged himself indebted unto the United States of America, in the sum of Two Thousand Dollars, of their goods and chattels, lands and tenements, to be levied and to the use of the United States rendered, upon the condition that the said defendant shall be and appear before this Court, at Norfolk, on the 26th day of January, 1918, to abide the judgment of the Court, and not to

depart thence without the leave of the Court, then this recognizance to be void; otherwise to remain in full force and virtue.

EDMUND WADDILL, Jr.,
United States District Judge.

FORM NO. 117**Order Sentencing Defendants and Allowing Bail Pending Writ of Error; Also Allowing Time for Bill of Exceptions.**

Morse *v.* United States, 255 Fed. 681 (C. C. A. 4th Cir.).

(Title of Cause.)

This day came again the United States, by their attorney, and the defendants appeared in discharge of their recognizances, and the motions for an arrest of judgment, to set aside the verdict and grant a new trial, and for a *venire de novo*, heretofore made herein, having been fully argued by Counsel, the same were overruled by the Court, to which ruling the defendants excepted. And it being demanded of the defendants, A. G. Backus and F. B. Morse, if anything they had or knew to say why the Court should not now proceed to pronounce sentence against them according to law, and nothing being offered or alleged in delay thereof, it is considered by the Court that the said A. G. Backus be fined the sum of Two Hundred (\$200.00) Dollars, without costs, and that the said F. B. Morse be fined the sum of Five Hundred (\$500.00) Dollars, without costs, and be confined in the Jail of the City of Norfolk, Virginia, for the period of six months, and the judgment of the Court be continued as to the defendant Victor Downs.

And the defendants, F. B. Morse and A. G. Backus, having intimated, through their counsel, their intention to apply for a writ of error and supersedeas of and to the judgment complained of, leave is given them to file their bills of exceptions on or before the 5th day of March, 1918.

Thereupon the said F. B. Morse with Leon C. Steele, his surety, each acknowledged himself indebted unto the United States of America in the sum of Four Thousand (\$4000.00) Dollars, and the said A. G. Backus and T. B. Backus, his surety, each acknowledged himself indebted unto the United States of America, in the sum of Two Thousand (\$2000.00) Dollars, of their goods

and chattels, lands and tenements, to be levied and to the use of the United States rendered upon the condition that the said F. B. Morse and A. G. Backus shall be and appear in this Court on the 5th day of March, 1918, to abide the judgment of this Court or of any appellate Court, to which this case may proceed, and not to depart hence without the leave of this Court or said appellate Court, then this obligation to be void; otherwise to remain in full force and virtue.

EDMUND WADDILL, Jr.,
United States District Judge.

FORM NO. 118

Order Extending Time to File Bills of Exceptions.

Morse *v.* United States, 255 Fed. 681 (C. C. A. 4th Cir.).

(Title of Cause.)

This day came the United States, by their attorney, and on motion of the defendant, F. B. Morse, by his counsel, it is ordered that the time within which the said defendant may file his bills of exceptions be, and the same is hereby, extended until March 18th, 1918. Thereupon the said A. G. Backus, appeared in open Court, and paid the fine imposed upon him by the Court, and nothing further being alleged or offered in delay thereof, it is ordered that he go hereof without day.

EDMUND WADDILL, Jr.,
United States District Judge.

FORM NO. 119

Indictment — Violation of Act of May 18, 1917. (Liquor)

Fetters et al. *v.* United States, 260 Fed. 142 (C. C. A. 9th Cir.).

IN THE NORTHERN DIVISION OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, FIRST DIVISION.

At a stated term of said court begun and holden at the City of Sacramento, in the County of Sacramento, in the Northern Division of the Northern District of California, on the Second Monday in

April in the year of our Lord one thousand nine hundred and eighteen.

The Grand Jurors of the United States of America, within and for the division and district aforesaid, on their oaths present:
That

EMMA PELL FETTERS and GEORGE FETTERS,

whose full and true names are, other than as herein stated, to the Grand Jurors unknown, late of the State and Northern Division of the Northern District of California, heretofore, to wit, on the first day of June, in the year of our Lord one thousand nine hundred and eighteen, at Boyes Springs, in the county of Sonoma, in the Northern Division of the Northern District of California, then and there being, did then and there unlawfully, willfully and knowingly sell an intoxicating liquor, to wit, a flask of Whiskey and Three Pint Bottles of Champagne, to a member of the military forces of the United States of America while in uniform, to wit, to B. E. Cranfill, Apprentice Seaman, then and there doing special duty for the Naval Intelligence Branch at San Francisco, California.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the Statute of the United States of America in such case made and provided.

JOHN W. PRESTON,
United States Attorney.

A true bill.

R. R. FLINT,
Foreman.

FORM NO. 120

Indictment for Larceny of Whiskey in Interstate Traffic.

Anderson v. United States, 260 Fed. 557 (C. C. A. 8th Cir.).

**IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR
TEXARKANA DIVISION OF THE WESTERN DISTRICT OF AR-
KANSAS AFORESAID, AT THE MAY TERM THEREOF, A.D. 1918.**

The Grand Jurors of the United States, impaneled, sworn, and charged at the Term aforesaid, of the court aforesaid, on their oath present, that R. Q. Ayers, W. C. Dabney, Melvin Anderson,

Gene Johnston, E. L. Edwards, Geo. Booker, Leon Harris and Leonard Riddick on the 8 day of November, in the year 1917 in the said division of said district, and within the jurisdiction of said court did then and there unlawfully, willfully and feloniously conspire, confederate and agree among themselves to commit an offense against the United States, that is to say; to steal from a certain railroad freight car certain goods then and there moving as, and constituting a part of an interstate shipment of freight, with the intent then and there to convert said goods to their own use; and that the said R. Q. Ayers, W. C. Dabney, and Leon Harris in pursuance of said conspiracy and to effect the object thereof, did on the 8 day of November, 1917, go to the Missouri Pacific Railway Company yards at Texarkana, Arkansas, and remove therefrom freight car No. 25524 to a point in said yards in Texarkana, Texas, near Tilson's Gravel Pit, said railroad freight car then and there being filled with intoxicating liquor, in cases, the said goods in the said car then and there being a part of, and moving as an interstate shipment of freight, from Henderson, Kentucky, to Houston, Texas, over the line of the Missouri Pacific Railway Company, to Texarkana, Arkansas, and from this point over the line of the Texas & Pacific Railway Company to the said Houston, Texas, and that said R. D. Ayers, W. C. Dabney and Leon Harris in furtherance of said conspiracy and to effect the object thereof, did then and there steal and take from the said railroad freight car, No. 25524 as aforesaid, 66 cases of whiskey and take and carry same away with them and converted same to their own use and to the use of the other co-conspirators, as aforesaid, to wit: Melvin Anderson, Gene Johnston, E. L. Edwards, Geo. Booker and Leonard Riddick, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

EMON O. MAHONY,
United States Attorney.
By J. S. HOLT,
Ass't. U. S. Attorney.

No. 1367. District Court of the United States for the Texarkana Division of the Western District of Arkansas. The United

States v. R. Q. Ayers, et al. INDICTMENT. Violating Sec. 37 P. C. Conspiracy 217 Fed. 853. A TRUE BILL. Phillip Agee, Foreman. Emon O. Mahony, U. S. Attorney.

Filed May 14, A.D. 1918. Wm. S. Wellshear, Clerk. By E. E. Hudspeth, D. C.

FORM NO. 121

Demurrer.

Anderson v. United States, 260 Fed. 557 (C. C. A. 8th Cir.).

(Title of Cause.)

Now comes Melvin Anderson, one of the defendants in the above styled cause, and protesting his innocence of all the acts alleged against him in the indictment herein, and especially reserving and in no wise waiving, his right to plead not guilty to said indictment, and demurs and excepts to such indictment, and for his demurrer and exceptions thereto urges and says:

1.

That said indictment fails to charge, or properly charge, any offense against the United States, in that the said indictment fails to charge the commission by this defendant and his co-defendants of any conspiracy to commit an offense against the United States.

2.

Because the said indictment is insufficient, in that it fails to allege, or properly allege, the necessary and essential elements of any crime against the United States which it is alleged the defendants herein conspired to commit.

3.

The said indictment is insufficient to allege a conspiracy to commit larceny of property being transported in interstate commerce or constituting a shipment, or part of a shipment of goods, wares or merchandise being transported in interstate commerce for this: (a) The indictment fails to charge who was the owner of the property which the defendants conspired to steal. (b) The

constituent elements of larceny are not alleged, in this: that it is not alleged that it was the purpose of the conspiracy to take from the possession of the owner thereof any property without his consent and with the intent to appropriate it to the use or benefit of the alleged conspirators, or any other person. (c) The car from which it is alleged the defendants conspired to steal goods is not described, or properly described. (d) No facts are alleged in the indictment from which it can be determined that either the car or the goods therein which it is alleged the defendants conspired to enter into and steal goods from, or such goods were being moved or transported in interstate commerce, or were a shipment, or part of a shipment, of freight being transported in interstate commerce. The indictment in the particulars named in this paragraph contains only conclusions of the pleader and does not state facts upon which such conclusions are based.

4.

The said indictment is further insufficient because it does not with sufficient clearness or certainty allege the object or purpose of the conspiracy alleged to have been entered into by the defendants, and the alleged object of a crime or offense against the United States.

Wherefore, the defendant, Melvin Anderson prays that the said indictment be quashed and held for naught.

J. S. CRUMPTON,
MAHAFFEY, KEENEY, & DALBY,
Attorneys for Defendant, Melvin Anderson.

FORM NO. 122

Order Overruling Demurrer.

Anderson *v.* United States, 260 Fed. 557 (C. C. A. 8th Cir.).

(Title of Cause.)

This day comes the United States of America by Emon O. Mahony, Esq., Attorney for the Western District of Arkansas, and J. S. Holt, Esq., Assistant Attorney for the Western District of Arkansas, and comes the defendant Melvin Anderson in his own proper person and by J. S. Crumpton and Mahaffey, Keeney &

Dalby his attorneys and files his separate demurrer to the indictment in the above entitled cause. Said demurrer coming on to be heard and argued by counsel and submitted, the court being well and sufficiently advised in the premises doth overrule the same. To which action of the court said defendant duly excepted at the time.

FORM NO. 123

Plea and Trial, Record of.

Anderson v. United States, 260 Fed. 557 (C. C. A. 8th Cir.).

(Title of Cause.)

This day comes the United States of America by Emon O. Mahony, Esq., Attorney for the Western District of Arkansas, and comes the defendant George Booker in his own proper person and by his attorneys Mahaffey, Keeney & Dalby, and the said defendant in open court waives formal arraignment and says he is not guilty as charged in said indictment and puts himself upon the country. Also comes the defendant Melvin Anderson in his own proper person and by J. S. Crumpton and Mahaffey, Keeney & Dalby his attorneys, and said defendant in open court waives formal arraignment and says he is not guilty as charged in said indictment and puts himself upon the country.

This day comes the United States of America by Emon O. Mahony, Esq., Attorney for the Western District of Arkansas, and come the defendants, Geo. Booker and Melvin Anderson in their own proper persons and by Mahaffey, Keeney & Dalby and J. S. Crumpton, their attorneys, and the United States by its said attorney moves for a trial of this cause as to defendants Geo. Booker and Melvin Anderson separate and apart from the other defendants; on consideration whereof and the statement of the District Attorney that the Government desires to offer certain of the co-defendants as witnesses, the court doth sustain said motion. To which action of the court the defendants Geo. Booker and Melvin Anderson each duly objected and excepted at the time.

Whereupon the said defendants Geo. Booker and Melvin Anderson having heretofore entered their pleas of not guilty to the indictment herein, it is ordered that a jury come to try the issues joined as to said defendants, and the following were selected as

jurors for the trial of this cause, to wit : J. T. Luck, John Wagoner, Heber Perkins, R. R. Cole, Pat Crane, Gwinnett C. Hall, B. F. Tubbs, Lewis A. Westbrook, J. A. Smith, Sam B. Schoolfield, Albert A. Ames, and D. F. Jackson, twelve good and qualified electors of the Texarkana Division of the Western District of Arkansas, duly selected, empaneled and sworn to try the issues joined ; and having heard the statement of the case by counsel and the evidence adduced, at the hour of adjournment the further consideration of this case is postponed until to-morrow morning at 8:30 o'clock. And it is ordered by the court that during the progress of this case the jury be kept together in a body in charge of the marshal, and the jury thereupon retired in charge of a sworn bailiff of the court.

FORM NO. 124

Trial Proceedings, Record of.

Anderson v. United States, 260 Fed. 557 (C. C. A. 8th Cir.).

(Title of Cause.)

This day comes the United States of America by Emon O. Mahony, Esq., Attorney for the Western District of Arkansas, and come the defendants Melvin Anderson and Geo. Booker in their own proper persons and by Mahaffey, Keeney & Dalby and J. S. Crumpton their attorneys as on yesterday, and comes the jury heretofore empaneled and sworn as on yesterday, and the trial of the case as to defendants Melvin Anderson and Geo. Booker proceeds. Having heard the evidence adduced on this day, on motion of the District Attorney the further trial of this case is postponed until Monday morning at 8:30 o'clock, May 20, 1918, and the jury retired in charge of a sworn bailiff of the court.

FORM NO. 125

Trial and Verdict, Record of

Anderson v. United States, 260 Fed. 557 (C. C. A. 8th Cir.).

(Title of Cause.)

This day comes the United States of America by Emon O. Mahony, Esq., Attorney for the Western District of Arkansas,

and come the defendants Melvin Anderson and Geo. Booker in their own proper persons, and by their attorneys Mahaffey, Keeney & Dalby and J. S. Crumpton, and comes the jury heretofore empaneled and sworn, to wit: J. T. Luck, John Wagoner, Neber Perkins, R. R. Cole, Pat Crane, Gwinnett C. Hall, B. F. Tubbs, Lewis A. Westbrook, J. A. Smith, Sam B. Schoolfield, Albert A. Ames and D. F. Jackson, and the trial of this cause as to Melvin Anderson and Geo. Booker proceeds. Having heard the remainder of the evidence and the argument of counsel, and receiving the charge of the court, the jury retired for deliberation and after deliberation returned into court the following verdict, to wit:

"We, the jury, find the defendant Melvin Anderson guilty as charged in the indictment.

"We, the jury, find the defendant George Booker guilty as charged in the indictment.

"PAT CRANE, *Foreman.*"

Whereupon, the jury is discharged from the further consideration of this case, and the defendants Melvin Anderson and Geo. Booker are held to bail in the sum of three thousand dollars each to await sentence. Thereupon the said defendants gave such interim bonds and the same being approved by the court, the said bonds are by the court ordered filed and the said defendants admitted to bail thereon.

FORM NO. 126

Motion in Arrest of Judgment.

Anderson *v.* United States, 260 Fed. 557 (C. C. A. 8th Cir.).

(Title of Cause.)

Now comes Melvin Anderson, one of the defendants in the above styled and numbered cause, and against whom a verdict of guilty was rendered in said cause on the 20th day of May, 1918, and moves the court to arrest the judgment against him and hold for naught the verdict of guilty rendered against him for the following reasons:

1.

Because the bill of indictment in this cause is insufficient to support any judgment against him, in this: the indictment contains but one count, and by such indictment it is sought to charge him and the other defendants with an unlawful conspiracy to violate a law of the United States. Such indictment is insufficient to charge a conspiracy to violate a law of the United States, in that the purpose or object of the conspiracy is not set out with sufficient or proper clearness or certainty. The indictment charges that the object of the conspiracy was to steal from a certain railroad freight car certain goods then and there moving as, and constituting a part of, an interstate shipment of freight with the intent to convert said goods to the use of the persons alleged to have formed such conspiracy, and does not further describe, declare or set out the object or purpose of the conspiracy. In the indictment the railroad freight car is not described; the ownership thereof is not alleged; neither the origin nor the destination of such car is alleged; the goods contained in such car are not described; the ownership of such goods is not alleged; no facts are alleged from which it can be determined by an inspection of the indictment that the goods in such car were moving as or constituted a part of, an interstate shipment of freight.

2.

Because no facts are alleged in the said indictment from which it can be determined by an inspection of the indictment that the overt acts charged to have been committed by R. Q. Ayers, W. C. Dabney and Leon Harris, the co-defendants and alleged co-conspirators of this defendant, were committed in pursuance of or to effect the object of the alleged conspiracy. In other words, no facts are alleged in the said indictment from which it is made to appear from an inspection of the said indictment that freight car No. 25524, alleged to have been moved by the said Ayers, Dabney and Harris on the 8 day of November, 1917, from the yards of the Missouri Pacific Railway Company in Texarkana, Arkansas, to a point in said yards in Texarkana, Texas, near Tilson's Gravel Pit, was in truth or fact the car from which it

is alleged the defendants named in the indictment conspired to steal goods; neither are any facts alleged in said indictment from which it can be ascertained that the car from which it is alleged the defendants named in the indictment conspired to steal was filled with intoxicating liquors in cases, nor that the said goods in the car mentioned in that part of the indictment attempting to allege the object or purpose of the alleged conspiracy was intoxicating liquors in cases, being a part of, and moving as, an interstate shipment of freight from Henderson, Kentucky, to Houston, Texas, over the line of the Missouri Pacific Railway Company to Texarkana, Arkansas, and from this point over the line of the Texas and Pacific Railway Company to Houston, Texas; neither are any facts alleged in said indictment from which it can be determined that the purpose or object of the alleged conspiracy was to steal or take from said car No. 25524 sixty-six cases of whiskey, or any quantity or amount of whiskey.

3.

Because it does not appear from the allegations of the said indictment with sufficient clearness of certainty, or from the allegation of facts in said indictment that the object or purpose of the alleged conspiracy was to commit an offense against the law of the United States, and that some overt act was committed by one of the alleged conspirators in furtherance of or for the purpose of carrying out the alleged conspiracy.

4.

Because on the trial of this cause the evidence was insufficient to show jurisdiction in this court to hear and determine this cause.

The defendant therefore prays that this motion be sustained, and that the judgment of conviction against him be arrested and held for naught, and that he have all such other orders as may be just or proper in the premises, and he will ever pray.

J. S. CRUMPTON,
MAHAFFEY, KEENEY & DALBY,
Attorneys for defendant, Melvin Anderson.

FORM NO. 127

**Order Overruling Motion in Arrest of Judgment and Allowing
Time in Which to File Motion for New Trial, Etc.**

Anderson *v.* United States, 260 Fed. 557 (C. C. A. 8th Cir.).

(Title of Cause.)

On this day comes the United States of America by Emon O. Mahony, Esq., Attorney for the Western District of Arkansas, and comes the defendant Melvin Anderson in his own proper person and by Mahaffey, Keeney & Dalby and J. S. Crumpton, his attorneys, and the defendant files his motion in arrest of judgment in this cause. Said motion coming on to be heard and being argued by counsel and submitted, the court being well and sufficiently advised in the premises doth overrule the same. To which action of the court in overruling said motion the said defendant in open court duly excepted at the time.

And comes also the defendant, Geo. Booker in his own proper person and by Mahaffey, Keeney & Dalby, his attorneys and the said defendant files his motion in arrest of judgment in this cause. Said motion coming on to be heard and being argued by counsel and submitted the court being well and sufficiently advised in the premises, doth overrule the same. To the action of the court in overruling said motion the said defendant George Booker duly excepted at the time.

Thereupon the said defendants Melvin Anderson and George Booker file separate motions for allowance of time in which to file motions for new trial and bill of exceptions. On consideration of said motions the court doth allow the said defendants until June 12, 1918, to file their motions for new trial and doth fix July 15, 1918, for hearing of said motions for new trial. The said defendants are held to bail ad interim in the sum of three thousand dollars each.

Thereupon the defendant Geo. Booker gave bond for his appearance as herein required, such bond being duly approved and filed and said defendant admitted to bail thereon. The defendant, Melvin Anderson, in default of bail, is committed to custody to await sentence.

FORM NO. 128

Judgment and Sentence.

Anderson v. United States, 260 Fed. 557 (C. C. A. 8th Cir.).

(Title of Cause.)

On motion of Emon O. Mahony, Esq., Attorney for the Western District of Arkansas, the said defendant, Melvin Anderson, was to the bar of the court, in custody of the marshal of the said district, and it being demanded of him what he has to or can say why the sentence of the law upon the verdict of guilty heretofore returned by the jury in this cause on the 20th day of May A.D. 1918, shall not now be pronounced against him, he says he has nothing further or other to say than he has heretofore said:

Whereupon the premises being seen, and by the court well and sufficiently understood, it is by the court considered, ordered and adjudged that the said Melvin Anderson for his said offense, be imprisoned in the United States Penitentiary situated at Leavenworth, in the State of Kansas, for the term and period of two years and that he pay to the United States of America a fine of One Thousand Dollars, together with all its costs in and about this prosecution laid out and expended, and that it have execution therefor.

It is further ordered, that the marshal of the Western District of Arkansas, in whose custody the said Melvin Anderson is now here committed, receive and safely keep and convey the body of the said Melvin Anderson hence to said United States Penitentiary without delay, and deliver him to the custody of the keeper of said Penitentiary, who will receive and safely keep the said Melvin Anderson in jail in execution of the sentence aforesaid, and in conformity with the same, for the full period of the time aforesaid.

And, it is further ordered, that the Clerk of this Court furnish the Marshal of this District with two duly certified copies of this judgment, sentence and order, under the seal of the Court, one of which shall be delivered to the keeper of said penitentiary and the other returned by the Marshal to this court with a full and true account of the execution of the same.

GROUP XIV

MURDER

No. 129. Indictment.

FORM NO. 129

Indictment.

Huber *v.* United States, 259 Fed. 766 (C. C. A. 9th Cir.).

IN THE DISTRICT COURT FOR THE TERRITORY OF ALASKA, FOURTH
JUDICIAL DIVISION.

THE UNITED STATES OF AMERICA,
Plaintiff,
v.
ALOIS HUBER,
Defendant.

Alois Huber is accused by the Grand Jury for the Territory of Alaska, Fourth Judicial Division, convened at Flat, Alaska, for the Special June, 1918, Term, by this indictment, of the crime of Manslaughter committed as follows:

On the 3d day of September, 1917, in the Territory of Alaska, Fourth Judicial Division, the said Alois Huber feloniously, unlawfully and voluntarily killed another, to wit: Mathias Schernthaner, by then and there shooting the said Mathias Schernthaner with a pistol, a further description of which is to the grand jury unknown; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Dated at Flat, Alaska, this 29th day of June, 1918.

R. F. ROTH,

United States Attorney.

THOS. McMAHON,

Foreman of Grand Jury.

A true Bill.

The following are the names of the witnesses examined before the grand jury on the finding of the foregoing indictment:

DUKE E. STUBBS.
W. J. CRIBBEE.

(Indorsed): No. 59-1. Criminal. District Court, Territory of Alaska, 4th Division. The United States of America, Plaintiff, vs. Alois Huber, Defendant. Indictment. For the Crime of Manslaughter. A true bill. Thos. McMahon, Foreman Grand Jury. Presented to the Court by the Foreman of the Grand Jury in open court in the presence of the Grand Jury and filed in the District Court, Territory of Alaska, Fourth Division. Jun. 29, 1918. J. E. Clark, Clerk. By Frank B. Hall, Deputy.

GROUP XV

CHINESE

- No. 130. Indictment for Conspiracy to Unlawfully Admit Chinese.
No. 131. Bench Warrant.
No. 132. Arraignment and Plea.
No. 133. Trial.

FORM NO. 130

Indictment for Conspiracy to Unlawfully Admit Chinese.

Louie Ding *et al. v.* United States, 246 Fed. 80 (C. C. A. 9th Cir.).

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION.

The United States of America, Western District
of Washington, Northern Division, ss.

The grand jurors of the United States of America, duly selected,
impaneled, sworn and charged to inquire within and for the
Northern Division of the Western District of Washington, upon
their oaths present :

Count 1

That James F. Worthington, Melvin B. Miller, Louie E. Lortie,
Louis Ding, Eng Dan, alias Ng Dan, alias China Dan, Louie
Lung Gin, Atshushi Ito, Jue Lee, Sam Yuen, Fong Wee, Wong
Ding, Ng Wah, Lock Wah and Wong Wing on the tenth day
of December, A.D. one thousand nine hundred and fifteen, at
Seattle, in the Northern Division of the Western District of
Washington and within the jurisdiction of this court, did willfully,
knowingly, unlawfully, feloniously, wickedly and maliciously
conspire, combine, confederate and agree together, and together
and with divers other persons to these grand jurors unknown, to
commit certain offenses against the United States, all as a part of

said conspiracy mentioned, to wit, to violate Section 11 of the Act of Congress of May 6, 1884, as amended and added to by the Act of July 5, 1884, in this: That it was the purpose and object of the said conspiracy and of the said conspirators, and each of them, to willfully, knowingly, unlawfully, feloniously and maliciously bring into and cause to be brought into the division and district aforesaid, and aid and abet the landing of, by vessel, at Seattle in said division and district aforesaid, in the United States, from Vancouver, in the province of British Columbia, in the Dominion of Canada, certain Chinese alien persons not lawfully entitled to enter the United States, and not lawfully entitled to be or remain in the United States; which said Chinese persons were and are named as follows, to wit: Jue Lee, Sam Yuen, Fong Wee, Wong Ding, Ng Wah, Lock Wah, Wong Wing, Lee Gin and Wong Yow, alias Wong You; and to violate Section 8 of the Act of Congress of February 20, 1907, as amended, in this:

That it was the purpose and object of the said conspiracy and of the said conspirators, and each of them, to willfully, knowingly, unlawfully, feloniously and maliciously bring into and land in the United States, at Seattle, aforesaid, by vessel, certain alien persons, who had not theretofore been duly admitted by an immigrant inspector of the United States, and who were not lawfully entitled to enter the United States or be or remain in the United States at all; which said mentioned alien Chinese persons were and are named as follows, to wit, Jue Lee, Sam Yuen, Fong Wee, Wong Ding, Ng Wah, Lock Wah, Wong Wing, Lee Gin and Wong Yow, alias Wong You.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That after the formation of said unlawful conspiracy and in pursuance of and to effect the object of said unlawful conspiracy, the said Louis E. Lortie, at Seattle in the northern division of the western district of Washington and within the jurisdiction of this court, on the tenth day of December, A.D. one thousand nine hundred and fifteen, did willfully, knowingly, unlawfully and feloniously receive and take from said Louie Ding a letter written in Chinese, the contents of the said letter and name of the addressee thereof being to the grand jurors unknown.

And the grand jurors aforesaid, upon their oaths, do further present: That after the formation of said unlawful conspiracy and in pursuance of and to effect the object of said unlawful conspiracy, the said Louis E. Lortie, at Seattle, in the Northern Division of the Western District of Washington and within the jurisdiction of this court, on the tenth day of December, A.D. one thousand nine hundred and fifteen, did willfully, knowingly, unlawfully and feloniously deliver and give to said James F. Worthington a letter written in Chinese, the contents of the said letter and name of the addressee thereof being to these grand jurors unknown.

And the grand jurors aforesaid, upon their oaths do further present: That after the formation of said unlawful conspiracy, the said Louie E. Lortie and the said James F. Worthington and the said Melvin B. Miller on the eleventh day of December, A.D. one thousand nine hundred and fifteen, did willfully, knowingly, unlawfully and feloniously go on board a launch, to wit, the "Blanch W", at the city of Seattle, in the Northern Division of the Western District of Washington and within the jurisdiction of this court, and in the waters of Puget Sound, a more particular description of said place being to these grand jurors unknown, and immediately thereafter operate and navigate the said launch, "Blanch W.", from said Seattle to the city of Vancouver, in the province of British Columbia in the Dominion of Canada; a more particular description of said journey being to these grand jurors unknown.

And the grand jurors aforesaid, upon their oaths do further present: That after the formation of said unlawful conspiracy and in pursuance of and to effect the object of said unlawful conspiracy, the said Melvin B. Miller and the said James F. Worthington, on the fourteenth day of December, A.D. one thousand nine hundred and fifteen, together with said Jue Lee, Sam Yuen, Fong Wee, Wong Ding, Ng Wah, Lock Wah and Wong Wing, at Vancouver, in the province of British Columbia in the Dominion of Canada, did willfully, knowingly, unlawfully and feloniously embark upon a certain launch called and named "Blanch W" and immediately thereafter sailed and traveled on said launch from the said city of Vancouver to the city of Seattle, in the Northern Division of the Western District of Washington.

INDICTMENT FOR CONSPIRACY

[FORM 130]

And the grand jurors aforesaid, upon their oaths do further present: That after the formation of said unlawful conspiracy and in pursuance of and to effect the object of said unlawful conspiracy, the said Melvin B. Miller and the said James F. Worthington, together with said Jue Lee, Sam Yuen, Fong Wee, Wong Ding, Ng Wah, Lock Wah and Song Wing, on the fourteenth day of December, A.D. one thousand nine hundred and fifteen, at Vancouver, in the province of British Columbia in the Dominion of Canada, did willfully, knowingly, unlawfully and feloniously embark upon a motor boat or launch named "Blanch W", and then and there and immediately thereafter bring, and cause to be brought, two certain mentioned Chinese alien persons, to wit, Lee Gin and Wong Yow, alias Wong You, who were then and there Chinese laborers, from said city of Vancouver, to the city of Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this court, on board said launch; all for the purpose of landing the said Lee Gin and the said Wong Yow, alias Wong You, in the said City of Seattle.

And the grand jurors aforesaid, upon their oaths do further present: That after the formation of the said unlawful conspiracy and in pursuance of and to effect the object of said unlawful conspiracy, the said James F. Worthington and the said Melvin B. Miller, on the fourteenth day of December, A.D. one thousand nine hundred and fifteen, at Vancouver, British Columbia, in the Dominion of Canada, did willfully, knowingly, unlawfully and feloniously go on board a launch or motor boat named "Blanch W", and immediately thereafter commence to operate, control, attend to and navigate the said motor boat, and immediately thereafter did operate and navigate the said boat from said Vancouver to said Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this Court.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

CLAY ALLEN,
United States Attorney.
WINTER S. MARTIN,
Assistant United States Attorney.

Indorsed : The United States *v.* James F. Worthington, *et al.* Indictment for Violation Sec. 37 Penal Code to violate Sec. 11 Act May 6, 1882, as amended, and Sec. 8, Act Feb. 20, 1907, as amended. A True Bill. John D. Wenger, Foreman Grand Jury. Presented to the Court by the Foreman of the Grand Jury in open Court, in the presence of the Grand Jury, and filed in the U. S. District Court, March 23, 1916. Frank L. Crosby, Clerk, By Ed M. Lakin, Deputy.

FORM NO. 131

Bench Warrant.

Louie Ding *et al. v.* United States, 246 Fed. 80 (C. C. A. 9th Cir.).

UNITED STATES OF AMERICA, WESTERN DISTRICT OF WASHINGTON,
NORTHERN DIVISION, ss.

THE PRESIDENT OF THE UNITED STATES.

To the Marshal of the United States of America, for the Western District of Washington, his Deputies, or any or either of them, Greeting :

Whereas, at a District Court of the United States of America, for the eastern District of Washington, begun and held at the city of Seattle, within and for the District aforesaid, on the 23rd day of March, in the year of our Lord one thousand nine hundred and sixteen the Grand Jurors, in and for said District, returned into the said District Court a True Bill of Indictment against Louie Ding for violation Sec. 37, Penal Code, to violate Sec. 11, Act May 6, 1882, as amended, and Sec. 8, Act Feb. 20, 1907, as amended, as by the said Bill of Indictment, now remaining on file and of record in the said Court, will more fully appear ; to which Bill of Indictment the said Louie Ding has not yet appeared or pleaded :

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said Louie Ding and him bring before the said Court, at the United States District Court Room, in the City of Seattle to answer the Bill of Indictment aforesaid.

Witness : The Honorable Jeremiah Neterer, Judge of the said

ARRAIGNMENT AND PLEA

[FORM 132]

District Court, and the Seal thereof, at the City of Seattle, this
23rd day of March, A. D. 1916.

(Seal)

CLAY ALLEN, Esq.,
United States District Attorney.

FRANK L. CROSBY

Clerk.

Marshal's Return.

UNITED STATES OF AMERICA, WESTERN DISTRICT OF WASHINGTON.

In obedience to the within Warrant, I have the body of the said Louie Ding before the Honorable, the District Court of the United States, in and for the District of Washington, this 25th day of March, A. D. 1916.

JOHN M. BOYLE,
U. S. Marshal,
By A. ROOKS,
Deputy U. S. Marshal.

Marshal's Fees, \$3.02.

Indorsed: Bench Warrant. (Indictment) Bail fixed at \$3,000.00. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Mar. 27, 1916. Frank L. Crosby, Clerk. By E. M. L., Deputy.

FORM NO. 132

Arraignment and Plea.

Louie Ding *et al. v.* United States, 246 Fed. 80 (C. C. A. 9th Cir.).

(Title of Cause.)

Now on this day into open Court comes the said defendant Louie Ding for arraignment, accompanied by his counsel Thos. B. MacMahon, and being asked if the name by which he is indicted is his true name, replies "My true name is Louie Tong Ding." Whereupon the reading of the indictment is waived and he here and now enters his plea of not guilty to the charge in the indictment herein against him.

Dated March 30, 1916.

Journal 5, Page 294.

FORM NO. 133

Trial.**Louie Ding et al. v. United States, 246 Fed. 80 (C. C. A. 9th Cir.).**

(Title of Cause.)

Now on this day this cause comes on for trial in open Court, the plaintiff being represented by Winter S. Martin, Asst. Dist. Atty., for the Government, and Thos. B. MacMahon appearing for defendants on trial as follows: Louie Ding, Louie Lung Gin, Jue Lee, Sam Yuen, Fong Wee, Wong Ding, Ng Wah, Lock Wah and Wong Wing. Both sides being ready for trial a jury is called and come and answer to their names as follows: A. R. Manca, C. E. Wilkins, Chas. H. Loux, John Storseth, J. W. Hughes, V. Elfendahl, J. C. Robinson, A. G. Newfang, Paul N. Myhre, A. P. Manion, R. J. Reichenbach, Thos. Alexander, twelve good and lawful men duly empaneled and sworn. On motion of defendants' counsel all witnesses except Thos. Fisher are excluded from the Court room during the trial. Opening statement is made by the Government and Louie Lortie examined. Plaintiff's exhibits are introduced as follows: Nos. 1, 2, 3, 4, 5 and 6. And now the hour of adjournment having arrived, by consent of parties it is ordered by the Court that this cause be and is hereby continued until ten o'clock tomorrow morning, and the Court having cautioned the jury in this case they are allowed to separate until that hour.

Dated June 1, 1916.

Journal 5, Page 361.

GROUP XVI

MANN ACT

No. 134. Indictment for Violation of Mann Act.

FORM NO. 134

Indictment for Violation of Mann Act.

**Huffman v. United States of America, 259 Fed. 35 (C. C. A.
8th Cir.).**

**UNITED STATES OF AMERICA,
DISTRICT OF COLORADO — ss.**

**IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE
DISTRICT OF COLORADO, AT THE APRIL TERM THEREOF,
A.D. 1917 AT PUEBLO, COLORADO.**

The Grand Jurors of the United States of America, within and for the district of Colorado, good and lawful men, duly selected, impaneled, sworn and charged, on their oaths present :

“A” That Charles W. Huffman, alias Wilbur Huff, late of the city and county of Denver, state of Colorado, on, to wit, April 11, A. D. 1917, at the city of East Palestine, in the county of Columbiana, in the state of Ohio, did knowingly, willfully, unlawfully and feloniously cause a certain girl, namely, Gladys M. Overlander, to be transported in interstate commerce from said city of East Palestine, in the state of Ohio, to the city and county of Denver, in the state and district of Colorado, and within the jurisdiction of this court, as a passenger upon the lines of certain common carriers engaged in interstate commerce (the names of which common carriers are to the Grand Jurors unknown), with the intent and purpose on the part of him, said Charles W. Huffman,

alias Wilbur Huff, to induce, entice and compel her, said Gladys M. Overlander, to engage in an immoral practice, to wit, the practice of illicit sexual intercourse with him said Charles W. Huffman alias Wilbur Huff at said city and county of Denver; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Second Count.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

That said Charles W. Huffman alias Wilbur Huff, on to wit, April 13, A. D. 1917, at the city of Saint Louis, in the state of Missouri, did knowingly, willfully, unlawfully and feloniously cause a certain girl, namely Gladys M. Overlander, to be transported in interstate commerce from said city of Saint Louis, in the state of Missouri, to the city and county of Denver, in the state and district of Colorado, and within the jurisdiction of this court, as a passenger upon the line or lines of a certain common carrier or carriers engaged in interstate commerce (the name or names of which said common carrier or carriers are to the grand jurors unknown), with the intent and purpose on the part of him, said Charles W. Huffman alias Wilbur Huff, to induce, entice and compel her, said Gladys M. Overlander, to engage in an immoral practice, to-wit, the practice of illicit sexual intercourse with him, said Charles W. Huffman alias Wilbur Huff, at said city and county of Denver; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Third Count.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

That said Charles W. Huffman, alias Wilbur Huff, on, to-wit, April 11, A. D. 1917, at the City of East Palestine, in the county of Columbiana, in the state of Ohio, did knowingly, willfully, unlawfully and feloniously persuade, induce and entice a certain girl, namely, one Gladys M. Overlander to go in interstate commerce from said city of East Palestine, in the state of Ohio, to the

INDICTMENT FOR VIOLATION OF MANN ACT [FORM 134

city and county of Denver, in the State and district of Colorado, and within the jurisdiction of this court, as a passenger upon the lines of certain common carriers engaged in interstate commerce (the names of which said common carriers are to the Grand Jurors unknown), with the intent and purpose on the part of him, said Charles W. Huffman alias Wilbur Huff, to persuade, induce, entice, and coerce her, said Gladys M. Overlander, to engage in an immoral practice, to-wit, the practice of illicit sexual intercourse with him, said Charles W. Huffman, alias Wilbur Huff, and that said Charles W. Huffman, alias Wilbur Huff, then and there and by means of such persuading, inducing, enticing and coercing did knowingly cause said Gladys M. Overlander to go and be carried and transported from said city of East Palestine, in the state of Ohio, to said city and county of Denver, in the State of Colorado, as a passenger in interstate commerce upon the lines of certain common carriers engaged in interstate commerce (the names of which said common carriers are to the Grand Jurors unknown); contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

Fourth Count.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

That said Charles W. Huffman, alias Wilbur Huff, on, to wit, April 13, A.D. 1917, at the city of Saint Louis, in the State of Missouri, did knowingly, willfully, unlawfully and feloniously persuade, induce, entice, and coerce a certain girl, namely, Gladys M. Overlander, to go in interstate commerce from said city of Saint Louis, in the state of Missouri, to the city and county of Denver, in the state and district of Colorado, and within the jurisdiction of this court, as a passenger upon the line or lines of a certain common carrier or carriers engaged in interstate commerce (the name or names of which said common carrier or carriers are to the Grand Jurors unknown), with the intent and purpose on the part of him, said Charles W. Huffman, alias Wilbur Huff, to persuade, induce, entice and coerce her, said Gladys M. Overlander, to engage in an immoral practice, to wit, the practice

of illicit sexual intercourse with him, said Charles W. Huffman, alias Wilbur Huff and that said Charles W. Huffman, alias Wilbur Huff, then and there and by means of such persuading, inducing, enticing and coercing did knowingly cause said Gladys M. Overlander to go and to be carried and transported from said city of Saint Louis, in the state of Missouri, to said city and county of Denver, in the state of Colorado, as a passenger in interstate commerce upon the line or lines of a certain common carrier or carriers engaged in interstate commerce (the name or names of which said common carrier or carriers are to the Grand Jurors unknown); contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

HARRY B. TEDROW,
*United States Attorney for the
District of Colorado.*

(Indorsed) : No. 1572. United States district court, district of Colorado. The United States of America *v.* Charles W. Huffman, alias Wilbur Huff. Indictment: Violation Secs. 2 and 4 White Slave Traffic Act. A true Bill, Edward Redmond, foreman. Bail \$1500. Filed Oct. 13, 1917, Charles W. Bishop, Clerk by Gardner M. Greene, Deputy Clerk, Harry B. Tedrow, U. S. Attorney.

GROUP XVII

MOTION TO QUASH BECAUSE OF A MULTIPLICITY OF INDICTMENTS

No. 135. Bill of Exceptions to Orders Denying Motions to Quash and Overruling Demurrs.

No. 136. Bill of Exceptions to Order Directing a Consolidation of Indictments and to Overruling Demurrs.

FORM NO. 135

Bill of Exceptions to Orders Denying Motions to Quash and Overruling Demurrs.

Ryan *et al.* v. United States, 216 Fed. 13 (C. C. A. 7th Cir.).

IN THE DISTRICT COURT OF THE UNITED STATES,

For the District of Indiana,

At Indianapolis.

United States v. Frank M. Ryan, <i>et al.</i>	Criminal Causes Nos. 3 to 34, both inclusive, consolidated under Criminal Cause No. 3, of the November Term, 1911. Bill of Exceptions for the defendants named below.
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Be it known, that on the 12th day of March, 1912, the motions to quash filed by the defendants, James Cooney, James Coughlin, Richard H. Houlihan, John W. Irwin, Patrick Ryan, William Shupe, in indictments number 3 to 34 inclusive, having been severally overruled, said defendants severally excepted to the order of the court in denying said motions in each of the foregoing causes, and the defendants' exceptions to the ruling and the decision of the court on said motion are hereby duly allowed, and this bill of exceptions settled and allowed.

Be it further known, that on said 12th day of March, 1912,

the several demurrs of the aforesaid defendants, James Cooney, James Coughlin, Richard H. Houlihan, John W. Irwin, Patrick Ryan, William Shupe, to indictments returned by the Federal Grand Jury at the November Term, 1911, of said court, numbered from No. 3 to 34, both inclusive, having been overruled by the court, said defendants severally excepted to the order of the court in overruling each of said demurrs in each of the aforesaid causes, and the defendants' exceptions to said rulings of the court are hereby duly allowed, and this bill of exceptions settled and allowed.

Be it further known, that on the 13th day of March, 1912, the United States District Attorney moved the court to consolidate the aforesaid indictments, numbered from No. 3 to No. 34, both inclusive, which motion was resisted and objected to by counsel for the aforesaid defendants, James Mooney, James Coughlin, Richard H. Houlihan, John W. Irwin, Patrick Ryan, William Shupe, but the court allowed said motion, to which ruling of the court, the aforesaid defendants severally excepted, and the defendants' exceptions are hereby duly allowed, and this bill of exceptions duly settled and allowed.

Done in open court this 19th day of March, 1912.

ALBERT B. ANDERSON,
Judge.

FORM NO. 136

Bill of Exceptions to Order Directing a Consolidation of Indictments and to Overruling Demurrs.

Ryan *et al.* v. United States, 216 Fed. 13 (C. C. A. 7th Cir.).

IN THE DISTRICT COURT OF THE UNITED STATES,

For the District of Indiana,

At Indianapolis.

United States v. Frank M. Ryan, <i>et al.</i>	Criminal Causes Nos. 3 to 34, both inclusive, consolidated under Criminal Cause No. 3, of the November Term, 1911. Bill of Exceptions for the defendants named below.
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Be it known that on the 12th day of March, 1912, the following named defendants, George Anderson, John H. Barry, Ernest G. W. Basey, William K. Benson, William Bernhardt, Charles N. Beum, Jack Bright, J. Brophy, W. Bert Brown, Daniel Buckley, John T. Butler, Edward Clark, Philip Cooley, Michael J. Cunnane, Milton H. Davis, Patrick F. Farrell, Michael J. Hannon, Frank J. Higgins, Herbert S. Hockin, A. J. Kavanaugh, Henry W. Legleitner, Andrew J. McCain, Fred Mooney, Paul J. Morrin, J. E. Munsey, Frank J. Murphy, Frank K. Painter, Murry L. Pennell, James E. Ray, William E. Reddin, Frank M. Ryan, Herman G. Seiffert, Fred Sherman, P. J. Smith, Edward Smythe, Charles Wachtmeister, Frank C. Webb, Michael J. Young, Clarence E. Dowd, Spurgeon P. Meadows, and Hiram Kline separately and severally demurred, to each indictment numbered from 3 to 34, both inclusive, returned by the Federal Grand Jury at the November Term, 1911, of the District Court of the United States for the District of Indiana, and that the aforesaid defendants separately and severally demurred to each several and separate count contained in said indictment from Nos. 3 to 34, both inclusive; and,

Be it further known, that said several demurrs as to each several indictment, and as to each several count thereof, were, on the day last aforesaid, each severally overruled as to each of said several defendants, to which order of the court in overruling said several demurrs said defendants each separately and severally at the time excepted in each of the aforesaid causes, and the defendants' separate and several exceptions in each of said several causes are hereby duly allowed, and this bill of exceptions is settled and allowed; and,

Be it further known, that on said 12th day of March, 1912, the United States District Attorney, for the District of Indiana, moved the court to consolidate all the indictments returned against said above named defendants, indicted with others at the November Term, 1911, of said court, which were numbered as aforesaid from Nos. 3 to 34, both inclusive, which motion was resisted and objected to by each of the aforesaid defendants, separately and severally, in each of the aforesaid causes; that said motion was taken under advisement by the court until March 13, 1912, at which time last aforesaid the court granted said motion, and

thereupon directed that all said indictments from No. 3 to No. 34, both inclusive, be consolidated for trial, to which ruling and action of the court said defendants, separately and severally, by their counsel, then and there in each of the aforesaid causes duly excepted, all of which exceptions are hereby duly allowed, and this bill of exceptions is settled and allowed.

Done in open court this 19th day of March, 1912.

ALBERT B. ANDERSON,

Judge.

GROUP XVIII

INCOME TAX — INTERNAL REVENUE

No. 137. Indictment for Violation of Section 1004, Title X, Act of September 8, 1916.

FORM NO. 137

Indictment for Violation of Section 1004, Title X, Act of September 8, 1916.

Rau v. United States, 260 Fed. 131 (C. C. A. 2d Cir.).

DISTRICT COURT OF THE UNITED STATES OF AMERICA,
FOR THE SOUTHERN DISTRICT OF NEW YORK.

At a Stated Term of the District Court of the United States of America, for the Southern District of New York, begun and held in the City and County of New York, within and for the district as aforesaid, on the first Tuesday of October, in the year of our Lord, one thousand nine hundred and eighteen, and continued by adjournment to and including the 4th day of November, in the year of our Lord, one thousand nine hundred and eighteen.

Southern District of New York, ss.:

The Grand Jurors of the United States of America, within and for the district aforesaid, on their oaths, present that Seymour L. Rau, of the Borough of Manhattan, City and State of New York, in the Seventh District of New York, and within the jurisdiction of this court, did violate Section 1004, Title X of the Act of September 8, 1916, and as amended by the Act of Congress of October 3, 1917, to wit, that the said defendant Seymour L. Rau, knowingly and wilfully failed to make any return for the year 1917 to the collector of internal revenue, the Second Internal Revenue District of the State of New York, Department of the Treasury, of his

FORM 137] INCOME TAX — INTERNAL REVENUE

income; that the said defendant, Seymour L. Rau, was the recipient of an income in the year 1917, which made him one of the persons whom the law required to file an income tax return with the Collector of Internal Revenue, for the Second Internal Revenue District of New York; that the said defendant Seymour L. Rau has failed to file any return whatsoever up to and including the time and the presentation of this indictment; that the provisions of the Act of Congress of September 8, 1916, as amended by Act of October 3, 1917, provided that such income tax return should have been made by March 1, 1918, against the peace of the United States and their dignity and contrary to the form of the Statute of the United States in such case made and provided (Section 1004, Title X, Act of September 8, 1916, and as amended October 3, 1917).

SECOND COUNT.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further present that the said defendant Seymour L. Rau within the Borough of Manhattan, City and State of New York, Southern District of New York, and within the jurisdiction of this Court, did knowingly and willfully fail to make any return for the year 1916 to the Collector of Internal Revenue, for the Second Internal Revenue District of the State of New York, Department of the Treasury of his income; that the said defendant Seymour L. Rau was the recipient of an income in the year 1916, which made him one of the persons whom the law required to file an income tax return with the Collector of Internal Revenue, for the Second Internal Revenue District of New York; that the said defendant Seymour L. Rau has failed to file any return whatsoever up to and including the time of the presentation of this indictment; that the provisions of the Act of Congress of September 8, 1916, provided that such income tax return should have been made by March 1, 1917, against the peace of the United States and their dignity, and contrary to the form of the Statute of the United States in such case made and provided (Section 1004, Title X, Act of September 8, 1916).

FRANCIS G. CAFFEY,
U. S. Attorney.

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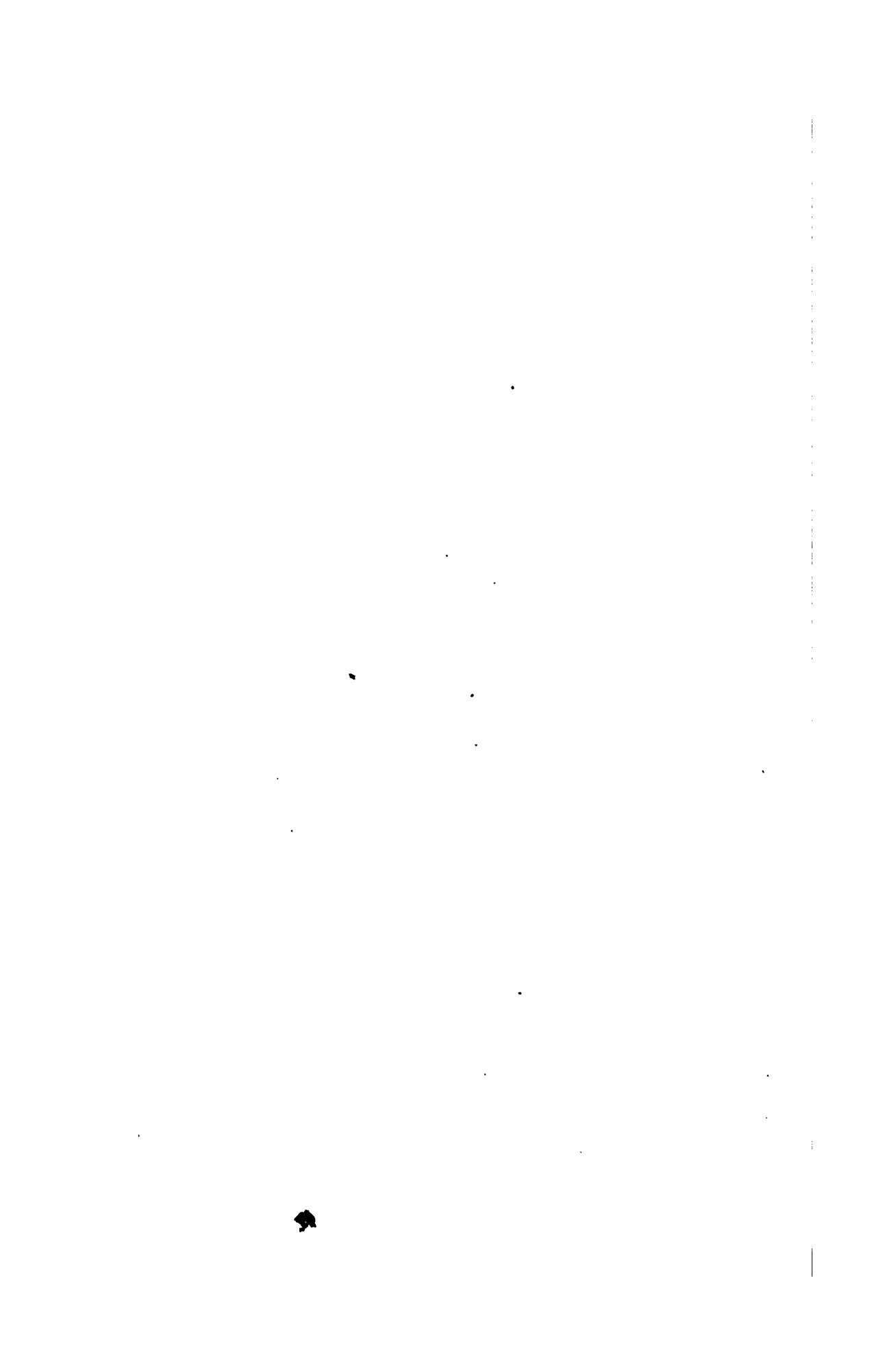
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